

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2740

AN ACT

AMENDING SECTIONS 4-101, 4-209, 4-213 AND 4-226, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-229; AMENDING SECTIONS 4-244, 4-246, 4-311 AND 5-395.03, ARIZONA REVISED STATUTES; AMENDING SECTION 28-673, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 1; AMENDING SECTION 28-1304, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1321, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 3; AMENDING SECTIONS 28-1381 AND 28-1382, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 307, SECTION 6; REPEALING SECTION 28-1383, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 4; AMENDING SECTIONS 28-1385, 28-1387 AND 28-3304, ARIZONA REVISED STATUTES; AMENDING SECTION 28-3319, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 12; AMENDING SECTIONS 28-3320, 28-3322, 28-3511 AND 28-3512, ARIZONA REVISED STATUTES; AMENDING LAWS 2005, CHAPTER 284, SECTION 15; RELATING TO ALCOHOL; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-101, Arizona Revised Statutes, is amended to
3 read:

4 4-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act of violence" means an incident consisting of a riot, a brawl
7 or a disturbance, in which bodily injuries are sustained by any person and
8 such injuries would be obvious to a reasonable person, or tumultuous conduct
9 of sufficient intensity as to require the intervention of a peace officer to
10 restore normal order, or an incident in which a weapon is brandished,
11 displayed or used. Act of violence does not include the use of nonlethal
12 devices by a peace officer.

13 2. "Aggrieved party" means a person who resides at, owns or leases
14 property within a one mile radius of a premises proposed to be licensed and
15 who filed a written request with the department to speak in favor of or
16 opposition to the issuance of the license no later than sixty days after the
17 filing of the application or fifteen days after action by the local governing
18 body, whichever is later.

19 3. "Beer" means any beverage obtained by the alcoholic fermentation,
20 infusion or decoction of barley malt, hops, or other ingredients not
21 drinkable, or any combination of them.

22 4. "Board" means the state liquor board.

23 5. "Bona fide guest" means:

24 (a) A person who is actually a houseguest or a person whose presence
25 as a guest is in response to a specific and personal invitation.

26 (b) In the case of a club that meets the criteria prescribed in
27 paragraph 7, subdivision (a) of this section, a current member of the armed
28 services of the United States who presents proper military identification and
29 any member of a recognized veterans' organization of THE UNITED STATES AND
30 OF any country allied with the United States during current or past wars or
31 through treaty arrangements.

32 6. "Broken package" means any container of spirituous liquor on which
33 the United States tax seal has been broken or removed, or from which the cap,
34 cork or seal placed thereupon by the manufacturer has been removed.

35 7. "Club" includes any of the following organizations where the sale
36 of spirituous liquor for consumption on the premises is made to members only:

37 (a) A post, chapter, camp or other local unit composed solely of
38 veterans and its duly recognized auxiliary which has been chartered by the
39 Congress of the United States for patriotic, fraternal or benevolent purposes
40 and which has, as the owner, lessee or occupant, operated an establishment
41 for that purpose in this state.

42 (b) A chapter, aerie, parlor, lodge or other local unit of an American
43 national fraternal organization which has as the owner, lessee or occupant
44 operated an establishment for fraternal purposes in this state. An American
45 national fraternal organization as used in this subdivision shall actively

1 operate in not less than thirty-six states or have been in active continuous
2 existence for not less than twenty years.

3 (c) A hall or building association of a local unit mentioned in
4 subdivisions (a) and (b) of this paragraph, all of the capital stock of which
5 is owned by the local unit or the members, and which operates the clubroom
6 facilities of the local unit.

7 (d) A golf club which has more than fifty bona fide members and which
8 owns, maintains or operates a bona fide golf links together with a clubhouse.

9 (e) A social club with more than one hundred bona fide members who are
10 actual residents of the county in which it is located, that owns, maintains
11 or operates club quarters, is authorized and incorporated to operate as a
12 nonprofit club under the laws of this state, and has been continuously
13 incorporated and operating for a period of not less than one year. The club
14 shall have had, during this one year period, a bona fide membership with
15 regular meetings conducted at least once each month, and the membership shall
16 be and shall have been actively engaged in carrying out the objects of the
17 club. The club's membership shall consist of bona fide dues paying members
18 paying at least six dollars per year, payable monthly, quarterly or annually,
19 which have been recorded by the secretary of the club, and the members at the
20 time of application for a club license shall be in good standing having for
21 at least one full year paid dues. At least fifty-one per cent of the members
22 shall have signified their intention to secure a social club license by
23 personally signing a petition, on a form prescribed by the board, which shall
24 also include the correct mailing address of each signer. The petition shall
25 not have been signed by a member at a date earlier than thirty days prior to
26 the filing of the petition. The club shall qualify for exemption from the
27 payment of state income taxes under title 43. It is the intent of this
28 paragraph that a license shall not be granted to a club which is, or has
29 been, primarily formed or activated to obtain a license to sell liquor, but
30 solely to a bona fide club, where the sale of liquor is incidental to the
31 main purposes of the club.

32 (f) An airline club operated by or for airlines which are certificated
33 by the United States government and which maintain or operate club quarters
34 located at airports with international status.

35 8. "Company" or "association", when used in reference to a
36 corporation, includes successors or assigns.

37 9. "Control" means the power to direct or cause the direction of the
38 management and policies of an applicant, licensee or controlling person,
39 whether through the ownership of voting securities or a partnership interest,
40 by agreement or otherwise. Control is presumed to exist if a person has the
41 direct or indirect ownership of or power to vote ten per cent or more of the
42 outstanding voting securities of the applicant, licensee or controlling
43 person or to control in any manner the election of one or more of the
44 directors of the applicant, licensee or controlling person. In the case of a
45 partnership, control is presumed to mean the general partner or a limited

1 partner who holds ten per cent or more of the voting rights of the
2 partnership. For the purposes of determining the percentage of voting
3 securities owned, controlled or held by a person, there shall be aggregated
4 with the voting securities attributed to the person the voting securities of
5 any other person directly or indirectly controlling, controlled by or under
6 common control with the other person, or by an officer, partner, employee or
7 agent of the person or by a spouse, parent or child of the person. Control
8 is also presumed to exist if a creditor of the applicant, licensee or
9 controlling person holds a beneficial interest in ten per cent or more of the
10 liabilities of the licensee or controlling person.

11 10. "Controlling person" means a person directly or indirectly
12 possessing control of an applicant or licensee.

13 11. "Department" means the department of liquor licenses and control.

14 12. "Director" means the director of the department of liquor licenses
15 and control.

16 13. "Distilled spirits" includes alcohol, brandy, whiskey, rum,
17 tequila, mescal, gin, absinthe, a compound or mixture of any of them or of
18 any of them with any vegetable or other substance, alcohol bitters, bitters
19 containing alcohol, fruits preserved in ardent spirits, and any alcoholic
20 mixture or preparation, whether patented or otherwise, which may in
21 sufficient quantities produce intoxication.

22 14. "Employee" means any person who performs any service on licensed
23 premises on a full-time, part-time or contract basis with consent of the
24 licensee, whether or not the person is denominated an employee, independent
25 contractor or otherwise. Employee does not include a person exclusively on
26 the premises for musical or vocal performances, for repair or maintenance of
27 the premises or for the delivery of goods to the licensee.

28 15. "Government license" means a license to serve and sell spirituous
29 liquor on specified premises available only to a county, city, town or state
30 university or the Arizona coliseum and exposition center upon application by
31 the governing body of a county, city, town or state university or the Arizona
32 exposition and state fair board.

33 16. "Legal drinking age" means the age of twenty-one years or older.

34 17. "License" means a license or an interim retail permit issued
35 pursuant to the provisions of this title.

36 18. "License fees" means fees collected for license issuance, license
37 application, license renewal, interim permit issuance and license transfer
38 between persons or locations.

39 19. "Licensee" means a person who has been issued a license or an
40 interim retail permit pursuant to the provisions of this title or a special
41 event licensee.

42 20. "Manager" means a natural person who meets the standards required
43 of licensees and has authority to organize, direct, carry on, control or
44 otherwise operate a licensed business on a temporary or full-time basis.

1 21. "Off-sale retailer" means any person operating a bona fide
2 regularly established retail liquor store selling spirituous liquors, wines
3 and beer, and any established retail store selling commodities other than
4 spirituous liquors and engaged in the sale of spirituous liquors only in the
5 original unbroken package, to be taken away from the premises of the retailer
6 and to be consumed off the premises.

7 22. "On-sale retailer" means any person operating an establishment
8 where spirituous liquors are sold in the original container for consumption
9 on or off the premises or in individual portions for consumption on the
10 premises.

11 23. "Person" includes a partnership, limited liability company,
12 association, company or corporation, as well as a natural person.

13 24. "Premises" or "licensed premises" means the area from which the
14 licensee is authorized to sell, dispense or serve spirituous liquors under
15 the provision of the license.

16 25. "Registered mail" includes certified mail.

17 26. "Registered retail agent" means any person who is authorized
18 pursuant to section 4-222 to purchase spirituous liquors for and on behalf of
19 himself and other retail licensees.

20 27. "Repeated acts of violence" means two or more acts of violence
21 occurring within seven days, three or more acts of violence occurring within
22 thirty days or acts of violence occurring with any other similar frequency
23 which the director determines to be unusual or deserving of review.

24 28. "Sell" includes soliciting or receiving an order for, keeping or
25 exposing for sale, directly or indirectly delivering for value, peddling,
26 keeping with intent to sell and trafficking in.

27 29. "Spirituous liquor" includes alcohol, brandy, whiskey, rum,
28 tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt
29 beverage, absinthe, a compound or mixture of any of them or of any of them
30 with any vegetable or other substance, alcohol bitters, bitters containing
31 alcohol, any liquid mixture or preparation, whether patented or otherwise,
32 which produces intoxication, fruits preserved in ardent spirits, and
33 beverages containing more than one-half of one per cent of alcohol by volume.

34 30. "Vehicle" means any means of transportation by land, water or air,
35 and includes everything made use of in any way for such transportation.

36 31. "Vending machine" means a machine that dispenses merchandise
37 through the means of coin, token, credit card or other nonpersonal means of
38 accepting payment for merchandise received.

39 32. "Veteran" means a person who has served in the United States air
40 force, army, navy, marine corps or coast guard, as an active nurse in the
41 services of the American red cross, in the army and navy nurse corps in time
42 of war, or in any expedition of the armed forces of the United States, and
43 who has received a discharge other than dishonorable.

1 33. "Voting security" means any security presently entitling the owner
2 or holder of the security to vote for the election of directors of an
3 applicant, licensee or controlling person.

4 34. "Wine" means the product obtained by the fermentation of grapes or
5 other agricultural products containing natural or added sugar or any such
6 alcoholic beverage fortified with grape brandy and containing not more than
7 twenty-four per cent of alcohol by volume.

8 Sec. 2. Section 4-209, Arizona Revised Statutes, is amended to read:

9 4-209. Fees for license, application, issuance, renewal and
10 transfer; late renewal penalty; seasonal operation;
11 surcharges

12 A. A fee shall accompany an application for an original license or
13 transfer of a license, or in case of renewal, shall be paid in advance.
14 Every license expires annually. A licensee who fails to renew the license on
15 or before the due date shall pay a penalty of one hundred fifty dollars which
16 the licensee shall pay with the renewal fee. A license renewal that is
17 deposited, properly addressed and postage prepaid in an official depository
18 of the United States mail on or before the due date shall be deemed filed and
19 received by the department on the date shown by the postmark or other
20 official mark of the United States postal service stamped on the envelope.
21 If the due date falls on a Saturday, Sunday or other legal holiday, the
22 renewal shall be considered timely if it is received by the department on the
23 next business day. The director may waive a late renewal penalty if good
24 cause is shown by the licensee. A licensee who fails to renew the license on
25 or before the due date may not sell, purchase or otherwise deal in spirituous
26 liquor until the license is renewed. A license which is not renewed within
27 sixty days after the due date is deemed terminated. The director may renew
28 the terminated license if good cause is shown by the licensee. An
29 application fee for an original license or the transfer of a license shall be
30 one hundred dollars, which shall be retained by this state.

31 B. Issuance fees for original licenses shall be:

32 1. For an in-state producer's license, to manufacture or produce
33 spirituous liquor in this state, one thousand five hundred dollars.

34 2. Except as provided in paragraph 15 of this subsection, for an
35 out-of-state producer's, exporter's, importer's or rectifier's license, two
36 hundred dollars.

37 3. For a domestic microbrewery license, three hundred dollars.

38 4. For a wholesaler's license, to sell spirituous liquors, one
39 thousand five hundred dollars.

40 5. For a government license issued in the name of a county, city or
41 town, one hundred dollars.

42 6. For a bar license, which is an on-sale retailer's license to sell
43 all spirituous liquors primarily by individual portions and in the original
44 containers, one thousand five hundred dollars.

1 7. For a beer and wine bar license, which is an on-sale retailer's
2 license to sell beer and wine primarily by individual portions and in the
3 original containers, one thousand five hundred dollars.

4 8. For a conveyance license issued to an operating railroad company,
5 to sell all spirituous liquors in individual portions or in the original
6 containers on all passenger trains operated by the railroad company, or to an
7 operating airline company, to sell or serve spirituous liquors solely in
8 individual portions on all passenger planes operated by the airline company,
9 or to a boat operating in the waters of this state, to sell all spirituous
10 liquors in individual portions or in the original containers for consumption
11 on the boat, one thousand five hundred dollars.

12 9. For a liquor store license, which is an off-sale retailer's license
13 to sell all spirituous liquors, one thousand five hundred dollars.

14 10. For a beer and wine store license, which is an off-sale retailer's
15 license to sell beer and wine, one thousand five hundred dollars.

16 11. For a hotel-motel license issued as such, to sell and serve
17 spirituous liquors solely for consumption on the licensed premises of the
18 hotel or motel, one thousand five hundred dollars.

19 12. For a restaurant license issued as such, to sell and serve
20 spirituous liquors solely for consumption on the licensed premises of the
21 restaurant, one thousand five hundred dollars.

22 13. For a domestic farm winery license, one hundred dollars.

23 14. For a club license issued in the name of a bona fide club qualified
24 under this title to sell all spirituous liquors on-sale, one thousand
25 dollars.

26 15. For an out-of-state winery that sells not more than fifty cases of
27 wine in this state in a calendar year, twenty-five dollars.

28 C. The department may issue licenses with staggered renewal dates to
29 distribute the renewal ~~work-load~~ **WORKLOAD** as uniformly as practicable
30 throughout the twelve months of the calendar year. If a license is issued
31 less than six months before the scheduled renewal date of the license, as
32 provided by the department's staggered license renewal system, one-half of
33 the annual license fee shall be charged.

34 D. The annual fees for licenses shall be:

35 1. For an in-state producer's license, to manufacture or produce
36 spirituous liquors in this state, three hundred fifty dollars.

37 2. Except as provided in paragraph 15 of this subsection, for an
38 out-of-state producer's, exporter's, importer's or rectifier's license, fifty
39 dollars.

40 3. For a domestic microbrewery license, three hundred dollars.

41 4. For a wholesaler's license, to sell spirituous liquors, two hundred
42 fifty dollars.

43 5. For a government license issued to a county, city or town, one
44 hundred dollars.

1 6. For a bar license, which is an on-sale retailer's license to sell
2 all spirituous liquors primarily by individual portions and in the original
3 containers, one hundred fifty dollars.

4 7. For a beer and wine bar license, which is an on-sale retailer's
5 license to sell beer and wine primarily by individual portions and in the
6 original containers, seventy-five dollars.

7 8. For a conveyance license issued to an operating railroad company,
8 to sell all spirituous liquors in individual portions or in the original
9 containers on all passenger trains operated by the railroad company, or to an
10 operating airline company, to sell or serve spirituous liquors solely in
11 individual portions on all passenger planes operated by the airline company,
12 or to a boat operating in the waters of this state, to sell all spirituous
13 liquor in individual portions or in the original containers for consumption
14 on the boat, two hundred twenty-five dollars.

15 9. For a liquor store license, which is an off-sale retailer's license
16 to sell all spirituous liquors, fifty dollars.

17 10. For a beer and wine store license, which is an off-sale retailer's
18 license to sell beer and wine, fifty dollars.

19 11. For a hotel-motel license issued as such, to sell and serve
20 spirituous liquors solely for consumption on the licensed premises of the
21 hotel or motel, five hundred dollars.

22 12. For a restaurant license issued as such, to sell and serve
23 spirituous liquors solely for consumption on the licensed premises of the
24 restaurant, five hundred dollars, AND FOR A RESTAURANT LICENSE THAT IS
25 PERMITTED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SECTION 4-213,
26 SUBSECTION E, AN ADDITIONAL AMOUNT ESTABLISHED BY THE DIRECTOR. THE
27 DEPARTMENT SHALL RETAIN NINETY PER CENT OF THE ADDITIONAL AMOUNT AND THE
28 DEPARTMENT IS NOT REQUIRED TO TRANSFER ALL OR ANY PORTION OF THIS AMOUNT TO
29 THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND. THE DEPARTMENT
30 SHALL TRANSMIT TEN PER CENT OF THE ADDITIONAL AMOUNT TO THE OVERSIGHT COUNCIL
31 ON DRIVING OR OPERATING UNDER THE INFLUENCE ABATEMENT FOR DEPOSIT IN THE
32 DRIVING UNDER THE INFLUENCE ABATEMENT FUND ESTABLISHED BY SECTION 28-1304.

33 13. For a domestic farm winery license, one hundred dollars.

34 14. For a club license issued in the name of a bona fide club qualified
35 under this title to sell all spirituous liquors on-sale, one hundred fifty
36 dollars.

37 15. For an out-of-state winery that sells not more than twenty-five
38 cases of wine in this state in a calendar year, twenty-five dollars.

39 E. Where the business of an on-sale retail licensee is seasonal, not
40 extending over periods of more than six months in any calendar year, the
41 licensee may designate the periods of operation, and a license may be granted
42 for those periods only, upon payment of one-half of the fee prescribed in
43 subsection D of this section.

44 F. Transfer fees from person to person for licenses transferred
45 pursuant to section 4-203, subsection C shall be three hundred dollars.

1 G. Transfer fees from location to location, as provided for in section
2 4-203, shall be one hundred dollars.

3 H. Assignment fees for a change of agent, as provided for in section
4 4-202, subsection C, shall be one hundred dollars, except that where a
5 licensee holds multiple licenses the assignment fee for the first license
6 shall be one hundred dollars and the assignment fee for all remaining
7 licenses transferred to the same agent shall be fifty dollars each, except
8 that the aggregate assignment fees shall in no event exceed one thousand
9 dollars.

10 I. No fee shall be charged by the department for an assignment of a
11 liquor license in probate or an assignment pursuant to the provisions of a
12 will or pursuant to a judicial decree in a domestic relations proceeding
13 which assigns ownership of a business which includes a spirituous liquor
14 license to one of the parties in the proceeding. In the case of
15 nontransferable licenses no fee shall be charged by the department for the
16 issuance of a license for a licensed business pursuant to a transfer of the
17 business in probate or pursuant to the provisions of a will or pursuant to a
18 judicial decree in a domestic relations proceeding which assigns ownership of
19 the business to one of the parties in the proceeding.

20 J. The director shall assess a surcharge of thirty dollars on all
21 licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section.
22 Monies from the surcharge shall be used by the department exclusively for the
23 costs of an auditor and support staff to review compliance by applicants and
24 licensees with the requirements of section 4-205.02, subsection E. The
25 department shall assess the surcharge as part of the annual license renewal
26 fee.

27 K. The director shall assess a surcharge of thirty-five dollars on all
28 licenses prescribed in this section. Monies from the surcharge shall be used
29 by the department exclusively for the costs of an enforcement program to
30 investigate licensees who have been the subject of multiple complaints to the
31 department. The enforcement program shall respond to complaints against
32 licensees by neighborhood associations, by neighborhood civic groups and from
33 municipal and county governments. The department shall assess the surcharge
34 as part of the annual license renewal fee.

35 L. The director shall assess a surcharge of twenty dollars on all
36 licenses prescribed in subsection D, paragraphs 11 and 12 of this section and
37 thirty-five dollars on all other licenses prescribed in this section. Monies
38 from the surcharge and from surcharges imposed pursuant to subsection K of
39 this section shall be used by the department exclusively for the costs of a
40 neighborhood association interaction and liquor enforcement management unit.
41 The unit shall respond to complaints from neighborhood associations,
42 neighborhood civic groups and local governing authorities regarding liquor
43 violations. The director shall report the unit's activities to the board at
44 each board meeting or as the board may direct.

1 Sec. 3. Section 4-213, Arizona Revised Statutes, is amended to read:

2 4-213. Restaurant audit

3 A. The director may require a restaurant to submit an audit of its
4 records to demonstrate compliance with section 4-205.02. The director shall
5 not require AN ESTABLISHMENT TO SUBMIT TO such an audit more than once a year
6 after the initial twelve months of operation EVEN IF THE ESTABLISHMENT IS
7 ALLOWED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SUBSECTION E OF
8 THIS SECTION.

9 B. Except as provided in subsection D of this section, the department
10 shall audit accounts, records and operations of a licensee that cover a
11 twelve month period. An establishment that averages at least forty per cent
12 of its gross revenue from the sale of food during the twelve month audit
13 period shall be deemed to comply with the gross revenue requirements of
14 section 4-205.02. The twelve month audit period shall fall within the
15 sixteen months immediately preceding the beginning of the audit.

16 C. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, if the audit OR
17 A CONSENT AGREEMENT THAT MAY BE OFFERED AT THE DISCRETION OF THE DIRECTOR AND
18 THAT IS SIGNED BY THE LICENSEE AND THE DIRECTOR reveals that the licensee did
19 not meet the definition of a restaurant as prescribed in section 4-205.02 AND
20 THE PERCENTAGE OF FOOD SALES DETERMINED BY THE AUDIT OR CONSENT AGREEMENT
21 WAS:

22 1. LESS THAN THIRTY PER CENT, the department shall revoke the license.

23 2. AT LEAST THIRTY PER CENT BUT LESS THAN THIRTY-SEVEN PER CENT, THE
24 DEPARTMENT SHALL ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

25 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,
26 EXCEPT THAT, AT THE END OF THAT SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE
27 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT
28 LICENSE.

29 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH A
30 RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

31 3. AT LEAST THIRTY-SEVEN PER CENT BUT LESS THAN FORTY PER CENT, THE
32 LICENSEE SHALL BE GRANTED A PERIOD OF ONE YEAR TO INCREASE THE FOOD
33 PERCENTAGE TO AT LEAST FORTY PER CENT. IF THE LICENSEE DOES NOT INCREASE THE
34 PERCENTAGE OF FOOD SALES TO AT LEAST FORTY PER CENT, THE DEPARTMENT SHALL
35 ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

36 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,
37 EXCEPT THAT, AT THE END OF THE SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE
38 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT
39 LICENSE.

40 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH
41 A RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

42 D. The department may conduct an audit of a licensee described in
43 section 4-209, subsection B, paragraph 12 after twelve months following the
44 beginning of operations as a restaurant by the licensee to determine
45 compliance by the licensee with section 4-205.02, except that the department

1 may conduct an audit of a licensee within the first twelve months of
2 operation if the licensee has made a substantial modification in the
3 restaurant equipment, service or entertainment items or seating capacity
4 during that twelve month period, in which event the department may conduct
5 the audit for a period of less than twelve months.

6 E. A RESTAURANT LICENSEE MAY CONTINUE TO OPERATE WITH ITS RESTAURANT
7 LICENSE IF ITS FOOD SALES ARE AT LEAST THIRTY PER CENT AND LESS THAN FORTY
8 PER CENT AND THE DEPARTMENT APPROVES THE CONTINUATION OF THE RESTAURANT
9 LICENSE PURSUANT TO THIS SUBSECTION AND SUBSECTIONS F, G, H AND I OF THIS
10 SECTION. THE DEPARTMENT SHALL NOT APPROVE MORE THAN FIFTEEN RESTAURANT
11 LICENSES PURSUANT TO THIS SUBSECTION AND SUBSECTIONS F, G, H AND I OF THIS
12 SECTION IN EACH OF THE FISCAL YEARS 2006-2007 AND 2007-2008. THE DEPARTMENT
13 MAY APPROVE A REQUEST SUBMITTED BY THE LICENSEE TO CONTINUE TO OPERATE WITH
14 ITS RESTAURANT LICENSE ONLY IF ALL OF THE FOLLOWING APPLY AT THE TIME THE
15 LICENSEE FILES ITS REQUEST WITH THE DEPARTMENT:

16 1. THE RESTAURANT HAS A SUFFICIENT NUMBER OF COOKS, FOOD PREPARATION
17 PERSONNEL AND WAIT STAFF TO PREPARE AND PROVIDE THE RESTAURANT SERVICES THAT
18 ARE NECESSARY FOR THE MENU OFFERED BY THE LICENSEE.

19 2. THE RESTAURANT'S EQUIPMENT IS OF A SUFFICIENT GRADE AND THE SIZE OF
20 THE RESTAURANT'S KITCHEN IS APPROPRIATE TO THE MENU OFFERED AND THE KITCHEN
21 OCCUPIES NOT LESS THAN TWENTY PER CENT OF THE TOTAL FLOOR SPACE OF THE
22 LICENSED PREMISES.

23 3. THE MENU IS OF A TYPE CONSISTENT WITH A RESTAURANT OPERATION. IN
24 MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH, THE DEPARTMENT MAY
25 CONSIDER THE PROPORTION OF FOOD SALES TO ALCOHOL SALES, THE PRICE OF
26 SPIRITUOUS LIQUOR BEVERAGES AND FOOD SERVED BY THE LICENSEE AND WHETHER THE
27 LICENSEE PROVIDES REDUCED PRICE OR COMPLEMENTARY FOOD AND BEVERAGES.

28 4. THE AGGREGATE AREA OF ALL DANCE FLOORS ON THE PREMISES IS NOT
29 GREATER THAN TEN PER CENT OF THE TOTAL FLOOR SPACE OF THE PUBLIC AREA OF THE
30 PREMISES.

31 5. NOT MORE THAN TWENTY PER CENT OF THE PUBLIC INTERIOR AREA FLOOR
32 SPACE CONSISTS OF POOL TABLES, DART OR ARCADE GAMES, BARSTOOLS, COCKTAIL
33 TABLES AND SIMILAR TYPES OF SEATING.

34 6. THE NAME OF THE RESTAURANT DOES NOT INCLUDE TERMS ASSOCIATED WITH
35 ALCOHOL CONSUMPTION SUCH AS "BAR", "TAVERN", "PUB", "SPIRITS", "CLUB",
36 "LOUNGE", "CABARET", "CANTINA" OR "SALOON".

37 7. DISPOSABLE DINNERWARE AND SMALLWARE, INCLUDING DINING UTENSILS, IS
38 NOT USED EXCEPT IN OUTDOOR AREAS.

39 F. IF THE DEPARTMENT INTENDS TO APPROVE A RESTAURANT'S CONTINUATION OF
40 OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION:

41 1. THE DEPARTMENT SHALL ADVISE THE GOVERNING BODY OF THE CITY OR TOWN
42 IF THE PREMISES IS WITHIN THE INCORPORATED LIMITS OF A CITY OR TOWN OR THE
43 COUNTY OF THE DEPARTMENT'S INTENT.

44 2. THE CITY OR TOWN OR THE COUNTY SHALL POST A NOTICE FOR AT LEAST
45 TWENTY DAYS ON THE LICENSED PREMISES THAT THE LICENSEE HAS MADE A REQUEST FOR

1 CONTINUATION TO OPERATE WITH A RESTAURANT LICENSE AND INVITE BONA FIDE
2 RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS OF
3 THE LICENSED PREMISES TO FILE WRITTEN COMMENTS TO THE DEPARTMENT REGARDING
4 THE REQUEST WITHIN THIRTY DAYS OF THE FIRST POSTING OF THE NOTICE.

5 G. IF THE LOCAL JURISDICTION THROUGH ITS GOVERNING BODY OR ITS
6 AUTHORIZED AGENT DOES NOT OBJECT WITHIN NINETY DAYS, THE LICENSEE MAY
7 CONTINUE ITS OPERATION AS A RESTAURANT.

8 H. IF THE DEPARTMENT INTENDS TO DISAPPROVE A RESTAURANT'S CONTINUATION
9 OF OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION, OR IF THE LOCAL
10 JURISDICTION OR ITS AGENT TIMELY OBJECTS TO ITS CONTINUATION, THE DEPARTMENT
11 SHALL SET A HEARING BEFORE THE BOARD AND THE LOCAL JURISDICTION SHALL POST A
12 NOTICE OF THE HEARING FOR A PERIOD OF AT LEAST TWENTY DAYS ON THE LICENSED
13 PREMISES. THE CITY OR TOWN OR THE COUNTY MAY TESTIFY AT THE HEARING AND BONA
14 FIDE RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS
15 OF THE LICENSED PREMISES MAY TESTIFY BEFORE THE BOARD REGARDING THE
16 LICENSEE'S REQUEST. THE BOARD SHALL DETERMINE WHETHER THE RESTAURANT MAY
17 CONTINUE ITS OPERATION BASED ON CONSIDERATION OF THE CRITERIA LISTED IN
18 SUBSECTION E OF THIS SECTION.

19 I. AS A CONDITION OF CONTINUING OPERATION AS A RESTAURANT UNDER
20 SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY REQUIRE THE LICENSEE TO
21 SPECIFICALLY ACKNOWLEDGE THE REPRESENTATIONS MADE BY THE LICENSEE REGARDING
22 ITS OPERATIONS IN SUPPORT OF THE LICENSEE'S CONTINUING OPERATION AS A
23 RESTAURANT. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IF THE LICENSEE
24 CHANGES ITS OPERATION IN ANY WAY THAT MATERIALLY AND DETRIMENTALLY AFFECTS
25 THE REPRESENTATIONS MADE BY THE LICENSEE, THE DEPARTMENT MAY AUDIT THE
26 LICENSEE OR TERMINATE THE LICENSE WITHOUT AN AUDIT.

27 J. IF A LICENSED PREMISES HAS NOT CONTINUOUSLY OPERATED UNDER A VALID
28 RESTAURANT LICENSE ISSUED PURSUANT TO SECTION 4-205.02 FOR A PERIOD OF AT
29 LEAST FIVE YEARS, THE LICENSEE SHALL NOT BE ELIGIBLE TO USE THE PROVISIONS OF
30 SUBSECTION C, PARAGRAPHS 2 AND 3 OF THIS SECTION.

31 Sec. 4. Section 4-226, Arizona Revised Statutes, is amended to read:

32 4-226. Exemptions

33 The provisions of this title do not apply to:

- 34 1. Drugstores selling spirituous liquors only upon prescription.
35 2. Any confectionery candy containing less than five per cent by
36 weight of alcohol.
37 3. Ethyl alcohol intended for use or used for the following purposes:
38 (a) Scientific, chemical, mechanical, industrial and medicinal
39 purposes.
40 (b) Use by those authorized to procure spirituous liquor or ethyl
41 alcohol tax-free, as provided by the acts of Congress and regulations
42 promulgated thereunder.
43 (c) In the manufacture of denatured alcohol produced and used as
44 provided by the acts of Congress and regulations promulgated thereunder.

1 (d) In the manufacture of patented, patent, proprietary, medicinal,
2 pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and
3 industrial preparations or products, unfit and not used for beverage
4 purposes.

5 (e) In the manufacture of flavoring extracts and syrups unfit for
6 beverage purposes.

7 4. The purchase, storage, distribution, service or consumption of wine
8 in connection with the bona fide practice of a religious belief or as an
9 integral part of a religious exercise by a church recognized by the United
10 States internal revenue service under section 501(c)(3) of the internal
11 revenue code and in a manner not dangerous to public health or safety. This
12 exemption does not apply to any alleged violation of section 4-244, paragraph
13 9, ~~33~~ 36, ~~34~~ 37 or ~~40~~ 44.

14 Sec. 5. Title 4, chapter 2, article 2, Arizona Revised Statutes, is
15 amended by adding section 4-229, to read:

16 4-229. Restaurant licensees; firearms; prohibition; posting of
17 notice; definition

18 A. A PREMISES THAT IS ISSUED A RESTAURANT LICENSE PURSUANT TO SECTION
19 4-205.02 MAY POST A NOTICE PROHIBITING THE POSSESSION OF A FIREARM ON THE
20 ENTIRE LICENSED PREMISES OR ON A PORTION OF THE LICENSED PREMISES. A NOTICE
21 PROHIBITING POSSESSION OF A FIREARM ON THE ENTIRE LICENSED PREMISES SHALL BE
22 CONSPICUOUSLY POSTED AT THE PRIMARY PUBLIC ENTRANCE TO THE LICENSED PREMISES
23 IN A POSITION THAT ASSURES IT IS LIKELY TO BE READ. A NOTICE PROHIBITING
24 POSSESSION OF A FIREARM ON A PORTION OF THE LICENSED PREMISES SHALL BE
25 CONSPICUOUSLY POSTED IN THE PROHIBITED PORTION OF THE PREMISES IN A POSITION
26 THAT ASSURES IT IS LIKELY TO BE READ.

27 B. THE NOTICE ALLOWED BY SUBSECTION A OF THIS SECTION PROHIBITING THE
28 POSSESSION OF A FIREARM ON THE ENTIRE LICENSED PREMISES SHALL STATE "THIS
29 PREMISES IS POSTED PURSUANT TO A.R.S. SECTION 4-229". THE NOTICE ALLOWED BY
30 SUBSECTION A OF THIS SECTION PROHIBITING THE POSSESSION OF A FIREARM ON A
31 PORTION OF THE LICENSED PREMISES SHALL STATE "THIS PORTION OF THE PREMISES IS
32 POSTED PURSUANT TO A.R.S. SECTION 4-229". IN EACH NOTICE THE WORDS "A.R.S.
33 SECTION 4-229" SHALL BE IN AT LEAST SEVENTY-TWO POINT TYPE.

34 Sec. 6. Section 4-244, Arizona Revised Statutes, is amended to read:

35 4-244. Unlawful acts

36 It is unlawful:

37 1. For a person to buy for resale, sell or deal in spirituous liquors
38 in this state without first having procured a license duly issued by the
39 board.

40 2. For a person to sell or deal in alcohol for beverage purposes
41 without first complying with this title.

42 3. For a distiller, vintner, brewer or wholesaler knowingly to sell,
43 dispose of or give spirituous liquor to any person other than a licensee
44 except in sampling wares as may be necessary in the ordinary course of
45 business, except in donating spirituous liquor to a nonprofit organization

1 which has obtained a special event license for the purpose of charitable fund
2 raising activities or except in donating spirituous liquor with a cost to the
3 distiller, brewer or wholesaler of up to one hundred dollars in a calendar
4 year to an organization that is exempt from federal income taxes under
5 section 501(c) of the internal revenue code and not licensed under this
6 title.

7 4. For a distiller, vintner or brewer to require a wholesaler to offer
8 or grant a discount to a retailer, unless the discount has also been offered
9 and granted to the wholesaler by the distiller, vintner or brewer.

10 5. For a distiller, vintner or brewer to use a vehicle for trucking or
11 transportation of spirituous liquors unless there is affixed to both sides of
12 the vehicle a sign showing the name and address of the licensee and the type
13 and number of the person's license in letters not less than three and
14 one-half inches in height.

15 6. For a person to take or solicit orders for spirituous liquors
16 unless the person is a salesman or solicitor of a licensed wholesaler, a
17 salesman or solicitor of a distiller, brewer, vintner, importer or broker or
18 a registered retail agent.

19 7. For any retail licensee to purchase spirituous liquors from any
20 person other than a solicitor or salesman of a wholesaler licensed in this
21 state.

22 8. For a retailer to acquire an interest in property owned, occupied
23 or used by a wholesaler in his business, or in a license with respect to the
24 premises of the wholesaler.

25 9. Except as provided in paragraphs 10 and 11 of this section, for a
26 licensee or other person to sell, furnish, dispose of or give, or cause to be
27 sold, furnished, disposed of or given, to a person under the legal drinking
28 age or for a person under the legal drinking age to buy, receive, have in the
29 person's possession or consume spirituous liquor. This paragraph shall not
30 prohibit the employment by an off-sale retailer of persons who are at least
31 sixteen years of age to check out, if supervised by a person on the premises
32 who is at least nineteen years of age, package or carry merchandise,
33 including spirituous liquor, in unbroken packages, for the convenience of the
34 customer of the employer, if the employer sells primarily merchandise other
35 than spirituous liquor.

36 10. For a licensee to employ a person under the age of nineteen years
37 to manufacture, sell or dispose of spirituous liquors. This paragraph shall
38 not prohibit the employment by an off-sale retailer of persons who are at
39 least sixteen years of age to check out, if supervised by a person on the
40 premises who is at least nineteen years of age, package or carry merchandise,
41 including spirituous liquor, in unbroken packages, for the convenience of the
42 customer of the employer, if the employer sells primarily merchandise other
43 than spirituous liquor.

44 11. For an on-sale retailer to employ a person under the age of
45 nineteen years in any capacity connected with the handling of spirituous

1 liquors. This paragraph does not prohibit the employment by an on-sale
2 retailer of a person under the age of nineteen years who cleans up the tables
3 on the premises for reuse, removes dirty dishes, keeps a ready supply of
4 needed items and helps clean up the premises.

5 12. For a licensee, when engaged in waiting on or serving customers, to
6 consume spirituous liquor or for a licensee or on-duty employee to be on or
7 about the licensed premises while in an intoxicated or disorderly condition.

8 13. For an employee of a retail licensee, during that employee's
9 working hours or in connection with such employment, to give to or purchase
10 for any other person, accept a gift of, purchase for himself or consume
11 spirituous liquor, except that:

12 (a) An employee of a licensee, during that employee's working hours or
13 in connection with the employment, while the employee is not engaged in
14 waiting on or serving customers, may give spirituous liquor to or purchase
15 spirituous liquor for any other person.

16 (b) An employee of an on-sale retail licensee, during that employee's
17 working hours or in connection with the employment, while the employee is not
18 engaged in waiting on or serving customers, may taste samples of beer or wine
19 not to exceed four ounces per day or distilled spirits not to exceed two
20 ounces per day provided by an employee of a wholesaler or distributor who is
21 present at the time of the sampling.

22 (c) An employee of an on-sale retail licensee, under the supervision
23 of a manager as part of the employee's training and education, while not
24 engaged in waiting on or serving customers may taste samples of distilled
25 spirits not to exceed two ounces per educational session or beer or wine not
26 to exceed four ounces per educational session, and provided that a licensee
27 shall not have more than two educational sessions in any thirty day period.

28 (d) An unpaid volunteer who is a bona fide member of a club and who is
29 not engaged in waiting on or serving spirituous liquor to customers may
30 purchase for himself and consume spirituous liquor while participating in a
31 scheduled event at the club. An unpaid participant in a food competition may
32 purchase for himself and consume spirituous liquor while participating in the
33 food competition.

34 (e) An unpaid volunteer of a special event licensee under section
35 4-203.02 may purchase and consume spirituous liquor while not engaged in
36 waiting on or serving spirituous liquor to customers at the special
37 event. This subdivision does not apply to an unpaid volunteer whose
38 responsibilities include verification of a person's legal drinking age,
39 security or the operation of any vehicle or heavy machinery.

40 14. For a licensee or other person to serve, sell or furnish spirituous
41 liquor to a disorderly or obviously intoxicated person, or for a licensee or
42 employee of the licensee to allow or permit a disorderly or obviously
43 intoxicated person to come into or remain on or about the premises, except
44 that a licensee or an employee of the licensee may allow an obviously
45 intoxicated person to remain on the premises for a period of time of not to

1 exceed thirty minutes after the state of obvious intoxication is known or
2 should be known to the licensee in order that a nonintoxicated person may
3 transport the obviously intoxicated person from the premises. For THE
4 purposes of this ~~section~~ PARAGRAPH, "obviously intoxicated" means inebriated
5 to the extent that a person's physical faculties are substantially impaired
6 and the impairment is shown by significantly uncoordinated physical action or
7 significant physical dysfunction that would have been obvious to a reasonable
8 person.

9 15. For an on-sale or off-sale retailer or an employee of such retailer
10 to sell, dispose of, deliver or give spirituous liquor to a person between
11 the hours of 2:00 a.m. and 6:00 a.m. on weekdays, and 2:00 a.m. and 10:00
12 a.m. on Sundays.

13 16. For a licensee or employee to knowingly permit any person on or
14 about the licensed premises to give or furnish any spirituous liquor to any
15 person under the age of twenty-one or knowingly permit any person under the
16 age of twenty-one to have in the person's possession spirituous liquor on the
17 licensed premises.

18 17. For an on-sale retailer or an employee of such retailer to allow a
19 person to consume or possess spirituous liquors on the premises between the
20 hours of 2:30 a.m. and 6:00 a.m. on weekdays, and 2:30 a.m. and 10:00 a.m.
21 on Sundays.

22 18. For an on-sale retailer to permit an employee or for an employee to
23 solicit or encourage others, directly or indirectly, to buy the employee
24 drinks or anything of value in the licensed premises during the employee's
25 working hours. No on-sale retailer shall serve employees or allow a patron
26 of the establishment to give spirituous liquor to, purchase liquor for or
27 drink liquor with any employee during the employee's working hours.

28 19. For an off-sale retailer or employee to sell spirituous liquor
29 except in the original unbroken container, to permit spirituous liquor to be
30 consumed on the premises or to knowingly permit spirituous liquor to be
31 consumed on adjacent property under the licensee's exclusive control.

32 20. For a person to consume spirituous liquor in a public place,
33 thoroughfare or gathering. The license of a licensee permitting a violation
34 of this paragraph on the premises shall be subject to revocation. This
35 paragraph does not apply to the sale of spirituous liquors on the premises of
36 and by an on-sale retailer. This paragraph also does not apply to a person
37 consuming beer from a broken package in a public recreation area or on
38 private property with permission of the owner or lessor or on the walkways
39 surrounding such private property.

40 21. For a person to have possession of or to transport spirituous
41 liquor which is manufactured in a distillery, winery, brewery or rectifying
42 plant contrary to the laws of the United States and this state. Any property
43 used in transporting such spirituous liquor shall be forfeited to the state
44 and shall be seized and disposed of as provided in section 4-221.

22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the municipality shall be adopted by local ordinance. This paragraph does not apply:

(a) If the person under the legal drinking age is accompanied by a spouse, parent or legal guardian of legal drinking age or is an on-duty employee of the licensee.

(b) If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 7, subdivision (a) and the person under the legal drinking age is any of the following:

(i) An active duty military service member.

(ii) A veteran.

(iii) A member of the United States army national guard or the United States air national guard.

(iv) A member of the United States military reserve forces.

(c) To the area of the premises used primarily for the serving of food during the hours when food is served.

23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than thirty-two ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph.

24. For a licensee or employee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises.

25. For a licensee or employee to knowingly permit prostitution or the solicitation of prostitution on the premises.

26. For a licensee or employee to knowingly permit unlawful gambling on the premises.

27. For a licensee or employee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.

1 28. For a licensee or employee to fail or refuse to make the premises
2 or records available for inspection and examination as provided in this title
3 or to comply with a lawful subpoena issued under this title.

4 29. ~~EXCEPT AS PROVIDED IN PARAGRAPH 31 OF THIS SECTION,~~ for any person
5 other than a peace officer, the licensee or an employee of the licensee
6 acting with the permission of the licensee to be in possession of a firearm
7 while on the licensed premises of an on-sale retailer knowing such possession
8 is prohibited. This paragraph ~~shall~~ DOES not ~~be construed to~~ include a
9 situation in which a person is on licensed premises for a limited time in
10 order to seek emergency aid and ~~such~~ THE person does not buy, receive,
11 consume or possess spirituous liquor. This paragraph ~~shall not~~ DOES apply to
12 hotel or motel guest room accommodations ~~nor~~ OR to the exhibition or display
13 of a firearm in conjunction with a meeting, show, class or similar event.

14 30. ~~EXCEPT AS PROVIDED IN PARAGRAPH 32 OF THIS SECTION,~~ for a licensee
15 or employee to knowingly permit a person in possession of a firearm other
16 than a peace officer, the licensee or an employee of the licensee acting with
17 the permission of the licensee to remain on the licensed premises or to
18 serve, sell or furnish spirituous liquor to a person in possession of a
19 firearm while on the licensed premises of an on-sale retailer. This
20 paragraph ~~shall~~ DOES not apply to hotel or motel guest room accommodations
21 ~~nor~~ OR to the exhibition or display of a firearm in conjunction with a
22 meeting, show, class or similar event. It ~~shall be~~ IS a defense to action
23 under this paragraph if the licensee or employee requested assistance of a
24 peace officer to remove such person.

25 31. ~~FOR ANY PERSON OTHER THAN A PEACE OFFICER, A RESTAURANT LICENSEE OR~~
26 ~~AN EMPLOYEE OF A RESTAURANT LICENSEE ACTING WITH THE PERMISSION OF THE~~
27 ~~RESTAURANT LICENSEE TO BE IN POSSESSION OF A FIREARM WHILE ON THE LICENSED~~
28 ~~PREMISES, OR APPLICABLE PORTION OF THE LICENSED PREMISES, OF A RESTAURANT~~
29 ~~LICENSEE WHO HAS POSTED A NOTICE PURSUANT TO SECTION 4-229 IF THE PERSON~~
30 ~~KNOWS THE POSSESSION IS PROHIBITED. THIS PARAGRAPH DOES NOT APPLY IF A~~
31 ~~PERSON IS ON LICENSED PREMISES FOR A LIMITED TIME IN ORDER TO SEEK EMERGENCY~~
32 ~~AID AND THE PERSON DOES NOT BUY, RECEIVE, CONSUME OR POSSESS SPIRITUOUS~~
33 ~~LIQUOR. THIS PARAGRAPH DOES NOT APPLY TO HOTEL OR MOTEL GUEST ROOM~~
34 ~~ACCOMMODATIONS OR TO THE EXHIBITION OR DISPLAY OF A FIREARM IN CONJUNCTION~~
35 ~~WITH A MEETING, SHOW, CLASS OR SIMILAR EVENT.~~

36 32. ~~FOR A RESTAURANT LICENSEE OR AN EMPLOYEE OF A RESTAURANT LICENSEE~~
37 ~~TO KNOWINGLY PERMIT A PERSON IN POSSESSION OF A FIREARM OTHER THAN A PEACE~~
38 ~~OFFICER, THE RESTAURANT LICENSEE OR AN EMPLOYEE OF THE RESTAURANT LICENSEE~~
39 ~~ACTING WITH THE PERMISSION OF THE RESTAURANT LICENSEE TO REMAIN ON THE~~
40 ~~LICENSED PREMISES, OR APPLICABLE PORTION OF THE LICENSED PREMISES, POSTED~~
41 ~~PURSUANT TO SECTION 4-229 OR TO SERVE, SELL OR FURNISH SPIRITUOUS LIQUOR TO A~~
42 ~~PERSON IN POSSESSION OF A FIREARM WHILE ON THE LICENSED PREMISES, OR~~
43 ~~APPLICABLE PORTION OF THE LICENSED PREMISES, POSTED PURSUANT TO SECTION~~
44 ~~4-229. THIS PARAGRAPH DOES NOT APPLY TO HOTEL OR MOTEL GUEST ROOM~~
45 ~~ACCOMMODATIONS OR TO THE EXHIBITION OR DISPLAY OF A FIREARM IN CONJUNCTION~~

1 WITH A MEETING, SHOW, CLASS OR SIMILAR EVENT. IT IS A DEFENSE TO AN ACTION
2 UNDER THIS PARAGRAPH IF THE RESTAURANT LICENSEE OR EMPLOYEE OF THE RESTAURANT
3 LICENSEE REQUESTED ASSISTANCE OF A PEACE OFFICER TO REMOVE THE PERSON.

4 33. FOR ANY PERSON IN POSSESSION OF A FIREARM WHILE ON THE LICENSED
5 PREMISES OF A RESTAURANT LICENSEE TO CONSUME SPIRITUOUS LIQUOR. THIS
6 PARAGRAPH DOES NOT APPLY TO HOTEL OR MOTEL GUEST ROOM ACCOMMODATIONS OR TO
7 THE EXHIBITION OR DISPLAY OF A FIREARM IN CONJUNCTION WITH A MEETING, SHOW,
8 CLASS OR SIMILAR EVENT.

9 ~~31.~~ 34. For a licensee or employee to knowingly permit spirituous
10 liquor to be removed from the licensed premises, except in the original
11 unbroken package. This paragraph shall not apply to a person who removes a
12 bottle of wine which has been partially consumed in conjunction with a
13 purchased meal from the licensed premises if the cork is reinserted flush
14 with the top of the bottle.

15 ~~32.~~ 35. For a person who is obviously intoxicated to buy or attempt to
16 buy spirituous liquor from a licensee or employee of a licensee or to consume
17 spirituous liquor on licensed premises. FOR THE PURPOSES OF THIS PARAGRAPH,
18 "OBVIOUSLY INTOXICATED" MEANS INEBRIATED TO THE EXTENT THAT A PERSON'S
19 PHYSICAL FACULTIES ARE SUBSTANTIALLY IMPAIRED AND THE IMPAIRMENT IS SHOWN BY
20 SIGNIFICANTLY UNCOORDINATED PHYSICAL ACTION OR SIGNIFICANT PHYSICAL
21 DYSFUNCTION THAT WOULD HAVE BEEN OBVIOUS TO A REASONABLE PERSON.

22 ~~33.~~ 36. For a person under the age of twenty-one years to drive or be
23 in physical control of a motor vehicle while there is any spirituous liquor
24 in the person's body.

25 ~~34.~~ 37. For a person under the age of twenty-one years to operate or
26 be in physical control of a motorized watercraft that is underway while there
27 is any spirituous liquor in the person's body. For the purposes of this
28 paragraph, "underway" has the same meaning prescribed in section 5-301.

29 ~~35.~~ 38. For a licensee, manager, employee or controlling person to
30 purposely induce a voter, by means of alcohol, to vote or abstain from voting
31 for or against a particular candidate or issue on an election day.

32 ~~36.~~ 39. For a licensee to fail to report an occurrence of an act of
33 violence to either the department or a law enforcement agency.

34 ~~37.~~ 40. For a licensee to use a vending machine for the purpose of
35 dispensing spirituous liquor.

36 ~~38.~~ 41. For a licensee to offer for sale a wine carrying a label
37 including a reference to Arizona or any Arizona city, town or geographic
38 location unless at least seventy-five per cent by volume of the grapes used
39 in making the wine were grown in Arizona.

40 ~~39.~~ 42. For a retailer to knowingly allow a customer to bring
41 spirituous liquor onto the licensed premises, except that an on-sale retailer
42 may allow a wine and food club to bring wine onto the premises for
43 consumption by the club's members and guests of the club's members in
44 conjunction with meals purchased at a meeting of the club that is conducted
45 on the premises and that at least seven members attend. An on-sale retailer

1 who allows wine and food clubs to bring wine onto its premises under this
2 paragraph shall comply with all applicable provisions of this title and any
3 rules adopted pursuant to this title to the same extent as if the on-sale
4 retailer had sold the wine to the members of the club and their guests. For
5 the purposes of this paragraph, "wine and food club" means an association
6 that has more than twenty bona fide members paying at least six dollars per
7 year in dues and that has been in existence for at least one year.

8 ~~40-~~ 43. For a person under the age of twenty-one years to have in the
9 person's body any spirituous liquor. In a prosecution for a violation of
10 this paragraph:

11 (a) Pursuant to section 4-249, it is a defense that the spirituous
12 liquor was consumed in connection with the bona fide practice of a religious
13 belief or as an integral part of a religious exercise and in a manner not
14 dangerous to public health or safety.

15 (b) Pursuant to section 4-226, it is a defense that the spirituous
16 liquor was consumed for a bona fide medicinal purpose and in a manner not
17 dangerous to public health or safety.

18 ~~41-~~ 44. For an employee of a licensee to accept any gratuity,
19 compensation, remuneration or consideration of any kind to either:

20 (a) Permit a person who is under twenty-one years of age to enter any
21 portion of the premises where that person is prohibited from entering
22 pursuant to paragraph 22 of this section.

23 (b) Sell, furnish, dispose of or give spirituous liquor to a person
24 who is under twenty-one years of age.

25 ~~42-~~ 45. For a person to purchase, offer for sale or use any device,
26 machine or process which mixes spirituous liquor with pure oxygen or another
27 gas to produce a vaporized product for the purpose of consumption by
28 inhalation.

29 ~~43-~~ 46. For a retail licensee or an employee of a retail licensee to
30 sell spirituous liquor to a person if the retail licensee or employee knows
31 the person intends to resell the spirituous liquor.

32 Sec. 7. Section 4-246, Arizona Revised Statutes, is amended to read:

33 ~~4-246.~~ Violation; classification

34 A. A person violating any provision of this title is guilty of a class
35 2 misdemeanor unless another classification is prescribed.

36 B. A person violating section 4-244, paragraph 9, 14, ~~33- 36~~, ~~41- 44~~ or
37 ~~43~~ 46 is guilty of a class 1 misdemeanor.

38 C. In addition to any other penalty prescribed by law, a person who is
39 convicted of a violation of section 4-244, paragraph ~~41- 44~~ shall pay a fine
40 of not less than five hundred dollars.

41 D. In addition to any other penalty prescribed by law, a person who is
42 convicted of a violation of section 4-241, ~~paragraph~~ SUBSECTION C, D or E
43 shall pay a fine of not less than two hundred fifty dollars.

1 Sec. 8. Section 4-311, Arizona Revised Statutes, is amended to read:

2 4-311. Liability for serving intoxicated person or minor;
3 definition

4 A. A licensee is liable for property damage and personal injuries or
5 is liable to a person who may bring an action for wrongful death pursuant to
6 section 12-612, **OR BOTH**, if a court or jury finds **ALL OF** the following:

7 1. The licensee sold spirituous liquor either to a purchaser who was
8 obviously intoxicated, or to a purchaser under the legal drinking age without
9 requesting identification containing proof of age or with knowledge that the
10 person was under the legal drinking age. ~~, and~~

11 2. The purchaser consumed the spirituous liquor sold by the licensee.
12 ~~, and~~

13 3. The consumption of spirituous liquor was a proximate cause of the
14 injury, death or property damage.

15 **B. A LICENSEE SHALL NOT BE CHARGED WITH KNOWLEDGE OF PREVIOUS ACTS BY**
16 **WHICH A PERSON BECOMES INTOXICATED AT OTHER LOCATIONS UNKNOWN TO THE LICENSEE**
17 **UNLESS THE PERSON WAS OBVIOUSLY INTOXICATED.**

18 ~~B- C.~~ C. For the purposes of subsection A, paragraph 2 of this section,
19 if it is found that an underage person purchased spirituous liquor from a
20 licensee and such underage person incurs or causes injuries or property
21 damage as a result of the consumption of spirituous liquor within a
22 reasonable period of time following the sale of the spirituous liquor, it
23 shall create a rebuttable presumption that the underage person consumed the
24 spirituous liquor sold to such person by the licensee.

25 ~~C- D.~~ D. For the purposes of this section "obviously intoxicated" means
26 inebriated to such an extent that a person's physical faculties are
27 substantially impaired and the impairment is shown by significantly
28 uncoordinated physical action or significant physical dysfunction, ~~that~~
29 would have been obvious to a reasonable person.

30 Sec. 9. Section 5-395.03, Arizona Revised Statutes, is amended to
31 read:

32 5-395.03. Test for alcohol concentration or drug content;
33 refusal; civil penalty

34 A. Any person who operates a motorized watercraft that is underway
35 within this state shall submit, subject to section 4-244, paragraph ~~34~~ **37**,
36 section 5-395 or section 5-396, to a test or tests of the person's blood,
37 breath, urine or other bodily substance for the purpose of determining
38 alcohol concentration or drug content if the person is arrested for any
39 offense arising out of acts alleged to have been committed in violation of
40 this chapter or section 4-244, paragraph ~~34~~ **37** while the person was operating
41 or in actual physical control of a motorized watercraft that was underway
42 while under the influence of intoxicating liquor or drugs. The test or tests
43 chosen by the law enforcement agency shall be administered at the direction
44 of a law enforcement officer having reasonable grounds to believe the person
45 to have been operating or in actual physical control of a motorized

1 watercraft that is underway within this state while under the influence of
2 intoxicating liquor or drugs, or if the person is under twenty-one years of
3 age, with spirituous liquor in the person's body.

4 B. Following an arrest a violator shall be requested to submit to and
5 successfully complete any test or tests prescribed by subsection A of this
6 section, and if the violator refuses the violator shall be informed that the
7 violator is subject to a civil penalty.

8 C. A person who refuses any test or tests prescribed by subsection A
9 of this section is subject to a civil penalty of seven hundred fifty dollars
10 and shall pay an additional civil penalty of five hundred dollars. ~~to~~ THE
11 ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS SHALL be deposited by the
12 state treasurer in the prison construction and operations fund established by
13 section 41-1651. ~~The additional civil penalty of five hundred dollars~~ AND is
14 not subject to any surcharge. If the additional civil penalty is imposed by
15 the superior court or a justice court, the court shall transmit the amount
16 collected for the additional civil penalty to the county treasurer. If the
17 additional civil penalty is imposed by a municipal court, the court shall
18 transmit the amount collected for the additional civil penalty to the city
19 treasurer. The city or county treasurer shall transmit the monies received
20 pursuant to this subsection to the state treasurer.

21 D. If a person under arrest refuses to submit to the test designated
22 by the law enforcement agency as provided in subsection A of this section
23 none shall be given, except as provided in section 5-395, subsection J or
24 pursuant to a search warrant.

25 Sec. 10. Section 28-673, Arizona Revised Statutes, as amended by Laws
26 2005, chapter 312, section 1, is amended to read:

27 28-673. Traffic accidents; implied consent; tests

28 A. A person who operates a motor vehicle within this state gives
29 consent to a test or tests of the person's blood, breath, urine or other
30 bodily substance for the purposes of determining alcohol concentration or
31 drug content if the person is involved in a traffic accident resulting in
32 death or serious physical injury as defined in section 13-105 and a law
33 enforcement officer has probable cause to believe that the person caused the
34 accident or the person is issued a citation for a violation of any provision
35 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of
36 this title.

37 B. The test or tests chosen by the law enforcement agency shall be
38 administered at the direction of a law enforcement officer who has reasonable
39 grounds to believe that the person was involved in a traffic accident
40 resulting in death or serious physical injury as defined in section 13-105
41 and who has probable cause to believe that the person caused the accident or
42 the person was issued a citation for a violation of any provision of this
43 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this
44 title.

1 C. After a determination is made that a person was involved in a
2 traffic accident resulting in death or serious physical injury as defined in
3 section 13-105 and the officer has probable cause to believe that the person
4 caused the accident or the person was issued a citation for a violation of
5 any provision of this article, article 2, 3 or 5 through 15 of this chapter
6 or chapter 4 of this title, the person may be requested to submit to and
7 successfully complete any test or tests prescribed by subsection A of this
8 section, and if the person refuses, the person shall be informed that the
9 person's license or permit to drive will be suspended or denied for twelve
10 months, or for two years for a second or subsequent refusal in a period of
11 ~~sixty~~ EIGHTY-FOUR months, unless the person expressly agrees to submit to and
12 successfully completes the test or tests. A failure to expressly agree to
13 the test or successfully complete the test is deemed a refusal. The person
14 shall also be informed that if the test results show a blood or breath
15 alcohol concentration of 0.08 or more, or if the results show a blood or
16 breath alcohol concentration of 0.04 or more and the person was driving or in
17 actual physical control of a commercial motor vehicle, the person's license
18 or permit to drive will be suspended or denied for not less than ninety
19 consecutive days.

20 D. If a person refuses to submit to the test designated by the law
21 enforcement agency as provided in subsection B of this section:

22 1. The test shall not be given, except as provided in section 28-1388,
23 subsection E or pursuant to a search warrant.

24 2. The law enforcement officer directing the administration of the
25 test shall:

26 (a) File a certified report of the refusal with the department.

27 (b) On behalf of the department, serve an order of suspension on the
28 person that is effective fifteen days after the date the order is served.

29 (c) Require the immediate surrender of any license or permit to drive
30 that is issued by this state and that is in the possession or control of the
31 person.

32 (d) If the license or permit is not surrendered, state the reason why
33 it is not surrendered.

34 (e) If a valid license or permit is surrendered, issue a temporary
35 driving permit that is valid for fifteen days.

36 (f) Forward the certified report of refusal, a copy of the completed
37 notice of suspension, a copy of any completed temporary permit and any driver
38 license or permit taken into possession under this section to the department
39 within five days after the issuance of the notice of suspension.

40 E. Section 28-1321, subsections E through ~~Q~~ P apply to any test
41 prescribed by this section and to any person who refuses to submit to a test
42 prescribed by this section, except that:

43 1. The certified report shall state the law enforcement officer's
44 reasonable grounds to believe that the person was involved in a traffic
45 accident resulting in death or serious physical injury as defined in section

1 13-105 and the law enforcement officer's probable cause to believe that the
2 person caused the accident or the person was issued a citation for a
3 violation of any provision of this article, article 2, 3 or 5 through 15 of
4 this chapter or chapter 4 of this title.

5 2. The certified report shall be filed pursuant to subsection D of
6 this section.

7 3. The scope of the hearing shall include the law enforcement
8 officer's probable cause to believe that the person was involved in a traffic
9 accident resulting in death or serious physical injury as defined in section
10 13-105 and the law enforcement officer's probable cause to believe that the
11 person caused the accident or the person was issued a citation for a
12 violation of any provision of this article, article 2, 3 or 5 through 15 of
13 this chapter or chapter 4 of this title.

14 F. A person who is dead, unconscious or otherwise in a condition
15 rendering the person incapable of refusal is deemed not to have withdrawn the
16 consent provided by subsection A of this section and the test or tests shall
17 be administered.

18 Sec. 11. Section 28-1304, Arizona Revised Statutes, is amended to
19 read:

20 28-1304. Driving under the influence abatement fund

21 A. The driving under the influence abatement fund is established
22 consisting of monies deposited pursuant to [SECTION 4-209, SUBSECTION D,](#)
23 [PARAGRAPH 12,](#) section 28-1382, subsection D, paragraph 3 and subsection F,
24 paragraph 3 and section 28-1383, subsection J, paragraph 2.

25 B. The oversight council on driving or operating under the influence
26 abatement established by section 28-1303 shall administer the fund.

27 C. Twenty-five per cent of the monies deposited in the fund shall be
28 used for grants for innovative programs pursuant to section 28-1303,
29 subsection H, paragraph 2 and seventy per cent of the monies deposited in the
30 fund shall be used for grants to political subdivisions and tribal
31 governments pursuant to section 28-1303, subsection H, paragraph 1.

32 D. Not more than five per cent of the monies deposited in the fund
33 shall be used for administrative purposes of the oversight council on driving
34 or operating under the influence abatement.

35 E. Monies in the fund are:

36 1. Continuously appropriated.

37 2. Exempt from the provisions of section 35-190 relating to lapsing of
38 appropriations.

39 F. On notice from the oversight council on driving or operating under
40 the influence abatement, the state treasurer shall invest and divest monies
41 in the fund as provided in section 35-313, and monies earned from investments
42 shall be credited to the fund.

1 Sec. 12. Section 28-1321, Arizona Revised Statutes, as amended by Laws
2 2005, chapter 312, section 3, is amended to read:

3 28-1321. Implied consent; tests; refusal to submit to test;
4 order of suspension; hearing; review; temporary
5 permit; notification of suspension; special ignition
6 interlock restricted driver license

7 A. A person who operates a motor vehicle in this state gives consent,
8 subject to section 4-244, paragraph ~~33~~ 36 or section 28-1381, 28-1382 or
9 28-1383, to a test or tests of the person's blood, breath, urine or other
10 bodily substance for the purpose of determining alcohol concentration or drug
11 content if the person is arrested for any offense arising out of acts alleged
12 to have been committed in violation of this chapter or section 4-244,
13 paragraph ~~33~~ 36 while the person was driving or in actual physical control of
14 a motor vehicle while under the influence of intoxicating liquor or drugs.
15 The test or tests chosen by the law enforcement agency shall be administered
16 at the direction of a law enforcement officer having reasonable grounds to
17 believe that the person was driving or in actual physical control of a motor
18 vehicle in this state either:

19 1. While under the influence of intoxicating liquor or drugs.

20 2. If the person is under twenty-one years of age, with spirituous
21 liquor in the person's body.

22 B. After an arrest a violator shall be requested to submit to and
23 successfully complete any test or tests prescribed by subsection A of this
24 section, and if the violator refuses the violator shall be informed that the
25 violator's license or permit to drive will be suspended or denied for twelve
26 months, or for two years for a second or subsequent refusal within a period
27 of ~~sixty~~ EIGHTY-FOUR months, unless the violator expressly agrees to submit
28 to and successfully completes the test or tests. A failure to expressly
29 agree to the test or successfully complete the test is deemed a refusal. The
30 violator shall also be informed that if the test results show a blood or
31 breath alcohol concentration of 0.08 or more, or if the results show a blood
32 or breath alcohol concentration of 0.04 or more and the violator was driving
33 or in actual physical control of a commercial motor vehicle, the violator's
34 license or permit to drive will be suspended or denied for not less than
35 ninety consecutive days.

36 C. A person who is dead, unconscious or otherwise in a condition
37 rendering the person incapable of refusal is deemed not to have withdrawn the
38 consent provided by subsection A of this section and the test or tests may be
39 administered, subject to section 4-244, paragraph ~~33~~ 36 or section 28-1381,
40 28-1382 or 28-1383.

41 D. If a person under arrest refuses to submit to the test designated
42 by the law enforcement agency as provided in subsection A of this section:

43 1. The test shall not be given, except as provided in section 28-1388,
44 subsection E or pursuant to a search warrant.

1 2. The law enforcement officer directing the administration of the
2 test shall:

3 (a) File a certified report of the refusal with the department.

4 (b) On behalf of the department, serve an order of suspension on the
5 person that is effective fifteen days after the date the order is served.

6 (c) Require the immediate surrender of any license or permit to drive
7 that is issued by this state and that is in the possession or control of the
8 person.

9 (d) If the license or permit is not surrendered, state the reason why
10 it is not surrendered.

11 (e) If a valid license or permit is surrendered, issue a temporary
12 driving permit that is valid for fifteen days.

13 (f) Forward the certified report of refusal, a copy of the completed
14 notice of suspension, a copy of any completed temporary permit and any driver
15 license or permit taken into possession under this section to the department
16 within five days after the issuance of the notice of suspension.

17 E. The certified report is subject to the penalty for perjury as
18 prescribed by section 28-1561 and shall state all of the following:

19 1. The officer's reasonable grounds to believe that the arrested
20 person was driving or in actual physical control of a motor vehicle in this
21 state either:

22 (a) While under the influence of intoxicating liquor or drugs.

23 (b) If the person is under twenty-one years of age, with spirituous
24 liquor in the person's body.

25 2. The manner in which the person refused to submit to the test or
26 tests.

27 3. That the person was advised of the consequences of refusal.

28 F. On receipt of the certified report of refusal and a copy of the
29 order of suspension and on the effective date stated on the order, the
30 department shall enter the order of suspension on its records unless a
31 written request for a hearing as provided in this section has been filed by
32 the accused person. If the department receives only the certified report of
33 refusal, the department shall notify the person named in the report in
34 writing sent by mail that:

35 1. Fifteen days after the date of issuance of the notice the
36 department will suspend the person's license or permit, driving privilege or
37 nonresident driving privilege.

38 2. The department will provide an opportunity for a hearing if the
39 person requests a hearing in writing and the request is received by the
40 department within fifteen days after the notice is sent.

41 G. The order of suspension issued by a law enforcement officer or the
42 department under this section shall notify the person that:

43 1. The person may submit a written request for a hearing.

1 2. The request for a hearing must be received by the department within
2 fifteen days after the date of the notice or the order of suspension will
3 become final.

4 3. The affected person's license or permit to drive or right to apply
5 for a license or permit or any nonresident operating privilege will be
6 suspended for twelve months from that date or for two years from that date
7 for a second or subsequent refusal within a period of ~~sixty~~ EIGHTY-FOUR
8 months.

9 H. The order for suspension shall:

10 1. Be accompanied by printed forms that are ready to mail to the
11 department and that may be filled out and signed by the person to indicate
12 the person's desire for a hearing.

13 2. Advise the person that unless the person has surrendered any driver
14 license or permit issued by this state the person's hearing request will not
15 be accepted, except that the person may certify pursuant to section 28-3170
16 that the license or permit is lost or destroyed.

17 I. On the receipt of a request for a hearing, the department shall set
18 the hearing within thirty days in the county in which the person named in the
19 report resides unless the law enforcement agency filing the certified report
20 of refusal pursuant to subsection D of this section requests at the time of
21 its filing that the hearing be held in the county where the refusal occurred.

22 J. A timely request for a hearing stays the suspension until a hearing
23 is held, except that the department shall not return any surrendered license
24 or permit to the person but may issue temporary permits to drive that expire
25 no later than when the department has made its final decision. If the person
26 is a resident without a license or permit or has an expired license or
27 permit, the department may allow the person to apply for a license or permit.
28 If the department determines the person is otherwise entitled to the license
29 or permit, the department shall issue and retain a license or permit subject
30 to this section.

31 K. Hearings requested under this section shall be conducted in the
32 same manner and under the same conditions as provided in section
33 28-3306. For the purposes of this section, the scope of the hearing shall
34 include only the issues of whether:

35 1. A law enforcement officer had reasonable grounds to believe that
36 the person was driving or was in actual physical control of a motor vehicle
37 in this state either:

38 (a) While under the influence of intoxicating liquor or drugs.

39 (b) If the person is under twenty-one years of age, with spirituous
40 liquor in the person's body.

41 2. The person was placed under arrest.

42 3. The person refused to submit to the test.

43 4. The person was informed of the consequences of refusal.

44 L. If the department determines at the hearing to suspend the affected
45 person's privilege to operate a motor vehicle, the suspension provided in

1 this section is effective fifteen days after giving written notice of the
2 suspension, except that the department may issue or extend a temporary
3 license that expires on the effective date of the suspension. If the person
4 is a resident without a license or permit or has an expired license or permit
5 to operate a motor vehicle in this state, the department shall deny to the
6 person the issuance of a license or permit for a period of twelve months
7 after the order of suspension becomes effective or for a period of two years
8 after the order of suspension becomes effective for a second or subsequent
9 refusal within a period of ~~sixty~~ EIGHTY-FOUR months.

10 M. If the suspension order is sustained after the hearing, a motion
11 for rehearing is not required. Within thirty days after a suspension order
12 is sustained, the affected person may file a petition in the superior court
13 to review the final order of suspension or denial by the department in the
14 same manner provided in section 28-3317. The court shall hear the review of
15 the final order of suspension or denial on an expedited basis.

16 N. If the suspension or determination that there should be a denial of
17 issuance is not sustained, the ruling is not admissible in and has no effect
18 on any administrative, civil or criminal court proceeding.

19 O. If it has been determined under the procedures of this section that
20 a nonresident's privilege to operate a motor vehicle in this state has been
21 suspended, the department shall give information in writing of the action
22 taken to the motor vehicle administrator of the state of the person's
23 residence and of any state in which the person has a license.

24 P. After completing not less than ninety consecutive days of the
25 period of suspension required by this section, a person whose driving
26 privilege is suspended pursuant to this section may apply to the department
27 for a special ignition interlock restricted driver license pursuant to
28 section 28-1401. Unless the certified ignition interlock period is extended
29 by the department pursuant to section 28-1402, a person who is issued a
30 special ignition interlock restricted driver license as provided in this
31 subsection shall maintain a functioning certified ignition interlock device
32 in compliance with THIS chapter ~~4 of this title~~ during the remaining period
33 of the suspension prescribed by this section. This subsection does not apply
34 to a person whose driving privilege is suspended for a second or subsequent
35 refusal within a period of ~~sixty~~ EIGHTY-FOUR months or a person who within a
36 period of ~~sixty~~ EIGHTY-FOUR months has been convicted of a second or
37 subsequent violation of article 3 of this chapter or section 4-244, paragraph
38 ~~33~~ 36 or an act in another jurisdiction that if committed in this state would
39 be a violation of article 3 of this chapter or section 4-244, paragraph ~~33~~
40 36.

1 Sec. 13. Section 28-1381, Arizona Revised Statutes, is amended to
2 read:

3 28-1381. Driving or actual physical control while under the
4 influence; trial by jury; presumptions; admissible
5 evidence; sentencing; classification

6 A. It is unlawful for a person to drive or be in actual physical
7 control of a vehicle in this state under any of the following circumstances:

8 1. While under the influence of intoxicating liquor, any drug, a vapor
9 releasing substance containing a toxic substance or any combination of
10 liquor, drugs or vapor releasing substances if the person is impaired to the
11 slightest degree.

12 2. If the person has an alcohol concentration of 0.08 or more within
13 two hours of driving or being in actual physical control of the vehicle and
14 the alcohol concentration results from alcohol consumed either before or
15 while driving or being in actual physical control of the vehicle.

16 3. While there is any drug defined in section 13-3401 or its
17 metabolite in the person's body.

18 4. If the vehicle is a commercial motor vehicle that requires a person
19 to obtain a commercial driver license as defined in section 28-3001 and the
20 person has an alcohol concentration of 0.04 or more.

21 B. It is not a defense to a charge of a violation of subsection A,
22 paragraph 1 of this section that the person is or has been entitled to use
23 the drug under the laws of this state.

24 C. A person who is convicted of a violation of this section is guilty
25 of a class 1 misdemeanor.

26 D. A person using a drug prescribed by a medical practitioner licensed
27 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
28 subsection A, paragraph 3 of this section.

29 E. In any prosecution for a violation of this section, the state shall
30 allege, for the purpose of classification and sentencing pursuant to this
31 section, all prior convictions of violating this section, section 28-1382 or
32 section 28-1383 occurring within the past thirty-six months, unless there is
33 an insufficient legal or factual basis to do so.

34 F. At the arraignment, the court shall inform the defendant that the
35 defendant may request a trial by jury and that the request, if made, shall be
36 granted.

37 G. In a trial, action or proceeding for a violation of this section or
38 section 28-1383 other than a trial, action or proceeding involving driving or
39 being in actual physical control of a commercial vehicle, the defendant's
40 alcohol concentration within two hours of the time of driving or being in
41 actual physical control as shown by analysis of the defendant's blood, breath
42 or other bodily substance gives rise to the following presumptions:

43 1. If there was at that time 0.05 or less alcohol concentration in the
44 defendant's blood, breath or other bodily substance, it may be presumed that
45 the defendant was not under the influence of intoxicating liquor.

1 2. If there was at that time in excess of 0.05 but less than 0.08
2 alcohol concentration in the defendant's blood, breath or other bodily
3 substance, that fact shall not give rise to a presumption that the defendant
4 was or was not under the influence of intoxicating liquor, but that fact may
5 be considered with other competent evidence in determining the guilt or
6 innocence of the defendant.

7 3. If there was at that time 0.08 or more alcohol concentration in the
8 defendant's blood, breath or other bodily substance, it may be presumed that
9 the defendant was under the influence of intoxicating liquor.

10 H. Subsection G of this section does not limit the introduction of any
11 other competent evidence bearing on the question of whether or not the
12 defendant was under the influence of intoxicating liquor.

13 I. A person who is convicted of a violation of this section:

14 1. Shall be sentenced to serve not less than ten consecutive days in
15 jail and is not eligible for probation or suspension of execution of sentence
16 unless the entire sentence is served.

17 2. Shall pay a fine of not less than two hundred fifty dollars.

18 3. May be ordered by a court to perform community restitution.

19 4. Shall pay an additional assessment of five hundred dollars to be
20 deposited by the state treasurer in the prison construction and operations
21 fund established by section 41-1651. This assessment is not subject to any
22 surcharge. If the conviction occurred in the superior court or a justice
23 court, the court shall transmit the assessed monies to the county treasurer.
24 If the conviction occurred in a municipal court, the court shall transmit the
25 assessed monies to the city treasurer. The city or county treasurer shall
26 transmit the monies received to the state treasurer.

27 5. Shall pay an additional assessment of five hundred dollars to be
28 deposited by the state treasurer in the state general fund. This assessment
29 is not subject to any surcharge. If the conviction occurred in the superior
30 court or a justice court, the court shall transmit the assessed monies to the
31 county treasurer. If the conviction occurred in a municipal court, the court
32 shall transmit the assessed monies to the city treasurer. The city or county
33 treasurer shall transmit the monies received to the state treasurer.

34 J. Notwithstanding subsection I, paragraph 1 of this section, at the
35 time of sentencing the judge may suspend all but twenty-four consecutive
36 hours of the sentence if the person completes a court ordered alcohol or
37 other drug screening, education or treatment program. If the person fails to
38 complete the court ordered alcohol or other drug screening, education or
39 treatment program and has not been placed on probation, the court shall issue
40 an order to show cause to the defendant as to why the remaining jail sentence
41 should not be served.

42 K. If within a period of ~~sixty~~ EIGHTY-FOUR months a person is
43 convicted of a second violation of this section or is convicted of a
44 violation of this section and has previously been convicted of a violation of
45 section 28-1382 or 28-1383 or an act in another jurisdiction that if

1 committed in this state would be a violation of this section or section
2 28-1382 or 28-1383, the person:

3 1. Shall be sentenced to serve not less than ninety days in jail,
4 thirty days of which shall be served consecutively, and is not eligible for
5 probation or suspension of execution of sentence unless the entire sentence
6 has been served.

7 2. Shall pay a fine of not less than five hundred dollars.

8 3. ~~May~~ **SHALL** be ordered by a court to perform **AT LEAST THIRTY HOURS OF**
9 community restitution.

10 4. Shall have the person's driving privilege revoked for one
11 year. The court shall report the conviction to the department. On receipt
12 of the report, the department shall revoke the person's driving privilege and
13 shall require the person to equip any motor vehicle the person operates with
14 a certified ignition interlock device pursuant to section 28-3319. In
15 addition, the court may order the person to equip any motor vehicle the
16 person operates with a certified ignition interlock device for more than
17 twelve months beginning on the date of reinstatement of the person's driving
18 privilege following a suspension or revocation or on the date of the
19 department's receipt of the report of conviction, whichever occurs
20 later. The person who operates a motor vehicle with a certified ignition
21 interlock device under this paragraph shall comply with article 5 of this
22 chapter.

23 5. Shall pay an additional assessment of one thousand two hundred
24 fifty dollars to be deposited by the state treasurer in the prison
25 construction and operations fund established by section 41-1651. This
26 assessment is not subject to any surcharge. If the conviction occurred in
27 the superior court or a justice court, the court shall transmit the assessed
28 monies to the county treasurer. If the conviction occurred in a municipal
29 court, the court shall transmit the assessed monies to the city
30 treasurer. The city or county treasurer shall transmit the monies received
31 to the state treasurer.

32 6. Shall pay an additional assessment of one thousand two hundred
33 fifty dollars to be deposited by the state treasurer in the state general
34 fund. This assessment is not subject to any surcharge. If the conviction
35 occurred in the superior court or a justice court, the court shall transmit
36 the assessed monies to the county treasurer. If the conviction occurred in a
37 municipal court, the court shall transmit the assessed monies to the city
38 treasurer. The city or county treasurer shall transmit the monies received
39 to the state treasurer.

40 L. Notwithstanding subsection K, paragraph 1 of this section, at the
41 time of sentencing, the judge may suspend all but thirty days of the sentence
42 if the person completes a court ordered alcohol or other drug screening,
43 education or treatment program. If the person fails to complete the court
44 ordered alcohol or other drug screening, education or treatment program and

1 has not been placed on probation, the court shall issue an order to show
2 cause as to why the remaining jail sentence should not be served.

3 M. In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection K
4 of this section, the dates of the commission of the offense shall be the
5 determining factor, irrespective of the sequence in which the offenses were
6 committed.

7 N. A second violation for which a conviction occurs as provided in
8 this section shall not include a conviction for an offense arising out of the
9 same series of acts.

10 Sec. 14. Section 28-1382, Arizona Revised Statutes, is amended to
11 read:

12 28-1382. Driving or actual physical control while under the
13 extreme influence of intoxicating liquor; trial by
14 jury; sentencing; classification

15 A. It is unlawful for a person to drive or be in actual physical
16 control of a vehicle in this state if the person has an alcohol concentration
17 of 0.15 or more within two hours of driving or being in actual physical
18 control of the vehicle and the alcohol concentration results from alcohol
19 consumed either before or while driving or being in actual physical control
20 of the vehicle.

21 B. A person who is convicted of a violation of this section is guilty
22 of driving or being in actual physical control of a vehicle while under the
23 extreme influence of intoxicating liquor.

24 C. At the arraignment, the court shall inform the defendant that the
25 defendant may request a trial by jury and that the request, if made, shall be
26 granted.

27 D. A person who is convicted of a violation of this section:

28 1. Shall be sentenced to serve not less than thirty consecutive days
29 in jail and is not eligible for probation or suspension of execution of
30 sentence unless the entire sentence is served.

31 2. Shall pay a fine of not less than two hundred fifty dollars. The
32 fine prescribed in this paragraph and any assessments, restitution and
33 incarceration costs shall be paid before the assessment prescribed in
34 paragraph 3 of this subsection.

35 3. Shall pay an additional assessment of two hundred fifty dollars.
36 If the conviction occurred in the superior court or a justice court, the
37 court shall transmit the monies received pursuant to this paragraph to the
38 county treasurer. If the conviction occurred in a municipal court, the court
39 shall transmit the monies received pursuant to this paragraph to the city
40 treasurer. The city or county treasurer shall transmit the monies received
41 to the state treasurer. The state treasurer shall deposit the monies
42 received in the driving under the influence abatement fund established by
43 section 28-1304.

44 4. May be ordered by a court to perform community restitution.

1 5. Shall be required by the department, on receipt of the report of
2 conviction, to equip any motor vehicle the person operates with a certified
3 ignition interlock device pursuant to section 28-3319. In addition, the
4 court may order the person to equip any motor vehicle the person operates
5 with a certified ignition interlock device for more than twelve months
6 beginning on the date of reinstatement of the person's driving privilege
7 following a suspension or revocation or on the date of the department's
8 receipt of the report of conviction, whichever occurs later. The person who
9 operates a motor vehicle with a certified ignition interlock device under
10 this paragraph shall comply with article 5 of this chapter.

11 6. Shall pay an additional assessment of one thousand dollars to be
12 deposited by the state treasurer in the prison construction and operations
13 fund established by section 41-1651. This assessment is not subject to any
14 surcharge. If the conviction occurred in the superior court or a justice
15 court, the court shall transmit the assessed monies to the county
16 treasurer. If the conviction occurred in a municipal court, the court shall
17 transmit the assessed monies to the city treasurer. The city or county
18 treasurer shall transmit the monies received to the state treasurer.

19 7. Shall pay an additional assessment of one thousand dollars to be
20 deposited by the state treasurer in the state general fund. This assessment
21 is not subject to any surcharge. If the conviction occurred in the superior
22 court or a justice court, the court shall transmit the assessed monies to the
23 county treasurer. If the conviction occurred in a municipal court, the court
24 shall transmit the assessed monies to the city treasurer. The city or county
25 treasurer shall transmit the monies received to the state treasurer.

26 E. Notwithstanding subsection D, paragraph 1 of this section, at the
27 time of sentencing the judge may suspend all but ten days of the sentence if
28 the person completes a court ordered alcohol or other drug screening,
29 education or treatment program. If the person fails to complete the court
30 ordered alcohol or other drug screening, education or treatment program and
31 has not been placed on probation, the court shall issue an order to show
32 cause to the defendant as to why the remaining jail sentence should not be
33 served.

34 F. If within a period of ~~sixty~~ EIGHTY-FOUR months a person is
35 convicted of a second violation of this section or is convicted of a
36 violation of this section and has previously been convicted of a violation of
37 section 28-1381 or 28-1383 or an act in another jurisdiction that if
38 committed in this state would be a violation of this section or section
39 28-1381 or 28-1383, the person:

40 1. Shall be sentenced to serve not less than one hundred twenty days
41 in jail, sixty days of which shall be served consecutively, and is not
42 eligible for probation or suspension of execution of sentence unless the
43 entire sentence has been served.

44 2. Shall pay a fine of not less than five hundred dollars. The fine
45 prescribed in this paragraph and any assessments, restitution and

1 incarceration costs shall be paid before the assessment prescribed in
2 paragraph 3 of this subsection.

3 3. Shall pay an additional assessment of two hundred fifty
4 dollars. If the conviction occurred in the superior court or a justice
5 court, the court shall transmit the monies received pursuant to this
6 paragraph to the county treasurer. If the conviction occurred in a municipal
7 court, the court shall transmit the monies received pursuant to this
8 paragraph to the city treasurer. The city or county treasurer shall transmit
9 the monies received to the state treasurer. The state treasurer shall
10 deposit the monies received in the driving under the influence abatement fund
11 established by section 28-1304.

12 4. ~~May~~ SHALL be ordered by a court to perform AT LEAST THIRTY HOURS OF
13 community restitution.

14 5. Shall have the person's driving privilege revoked for at least one
15 year. The court shall report the conviction to the department. On receipt
16 of the report, the department shall revoke the person's driving privilege and
17 shall require the person to equip any motor vehicle the person operates with
18 a certified ignition interlock device pursuant to section 28-3319. In
19 addition, the court may order the person to equip any motor vehicle the
20 person operates with a certified ignition interlock device for more than
21 twelve months beginning on the date of reinstatement of the person's driving
22 privilege following a suspension or revocation or on the date of the
23 department's receipt of the report of conviction, whichever is later. The
24 person who operates a motor vehicle with a certified ignition interlock
25 device under this paragraph shall comply with article 5 of this chapter.

26 6. Shall pay an additional assessment of one thousand two hundred
27 fifty dollars to be deposited by the state treasurer in the prison
28 construction and operations fund established by section 41-1651. This
29 assessment is not subject to any surcharge. If the conviction occurred in
30 the superior court or a justice court, the court shall transmit the assessed
31 monies to the county treasurer. If the conviction occurred in a municipal
32 court, the court shall transmit the assessed monies to the city treasurer.
33 The city or county treasurer shall transmit the monies received to the state
34 treasurer.

35 7. Shall pay an additional assessment of one thousand two hundred
36 fifty dollars to be deposited by the state treasurer in the state general
37 fund. This assessment is not subject to any surcharge. If the conviction
38 occurred in the superior court or a justice court, the court shall transmit
39 the assessed monies to the county treasurer. If the conviction occurred in a
40 municipal court, the court shall transmit the assessed monies to the city
41 treasurer. The city or county treasurer shall transmit the monies received
42 to the state treasurer.

43 G. Notwithstanding subsection F, paragraph 1 of this section, at the
44 time of sentencing, the judge may suspend all but sixty days of the sentence
45 if the person completes a court ordered alcohol or other drug screening,

1 education or treatment program. If the person fails to complete the court
2 ordered alcohol or other drug screening, education or treatment program and
3 has not been placed on probation, the court shall issue an order to show
4 cause as to why the remaining jail sentence should not be served.

5 H. In applying the ~~sixty~~ EIGHTY-FOUR month provision of subsection F
6 of this section, the dates of the commission of the offense shall be the
7 determining factor, irrespective of the sequence in which the offenses were
8 committed.

9 I. A second violation for which a conviction occurs as provided in
10 this section shall not include a conviction for an offense arising out of the
11 same series of acts.

12 J. A person who is convicted of a violation of this section is guilty
13 of a class 1 misdemeanor.

14 Sec. 15. Section 28-1383, Arizona Revised Statutes, as amended by Laws
15 2005, chapter 307, section 6, is amended to read:

16 28-1383. Aggravated driving or actual physical control while
17 under the influence; violation; classification;
18 definition

19 A. A person is guilty of aggravated driving or actual physical control
20 while under the influence of intoxicating liquor or drugs if the person does
21 any of the following:

22 1. Commits a violation of section 28-1381, section 28-1382 or this
23 section while the person's driver license or privilege to drive is suspended,
24 canceled, revoked or refused or while a restriction is placed on the person's
25 driver license or privilege to drive as a result of violating section 28-1381
26 or 28-1382 or under section 28-1385.

27 2. Within a period of ~~sixty~~ EIGHTY-FOUR months commits a third or
28 subsequent violation of section 28-1381, section 28-1382 or this section or
29 is convicted of a violation of section 28-1381, section 28-1382 or this
30 section and has previously been convicted of any combination of convictions
31 of section 28-1381, section 28-1382 or this section or acts in another
32 jurisdiction that if committed in this state would be a violation of section
33 28-1381, section 28-1382 or this section.

34 3. While a person under fifteen years of age is in the vehicle,
35 commits a violation of either:

36 (a) Section 28-1381.

37 (b) Section 28-1382.

38 B. The dates of the commission of the offenses are the determining
39 factor in applying the ~~sixty~~ EIGHTY-FOUR month provision provided in
40 subsection A, paragraph 2 of this section regardless of the sequence in which
41 the offenses were committed. For the purposes of this section, a third or
42 subsequent violation for which a conviction occurs does not include a
43 conviction for an offense arising out of the same series of acts.

1 C. The notice to a person of the suspension, cancellation, revocation
2 or refusal of a driver license or privilege to drive is effective as provided
3 in section 28-3318 or pursuant to the laws of the state issuing the license.

4 D. A person is not eligible for probation, pardon, commutation or
5 suspension of sentence or release on any other basis until the person has
6 served not less than four months in prison if the person is convicted under
7 either of the following:

8 1. Subsection A, paragraph 1 of this section.

9 2. Subsection A, paragraph 2 of this section and within a ~~sixty~~
10 EIGHTY-FOUR month period has been convicted of two prior violations of
11 section 28-1381, section 28-1382 or this section, or any combination of those
12 sections, or acts in another jurisdiction that if committed in this state
13 would be a violation of section 28-1381, section 28-1382 or this section.

14 E. A person who is convicted under subsection A, paragraph 2 of this
15 section and who within a ~~sixty~~ EIGHTY-FOUR month period has been convicted of
16 three or more prior violations of section 28-1381, section 28-1382 or this
17 section, or any combination of those sections, or acts in another
18 jurisdiction that if committed in this state would be a violation of section
19 28-1381, section 28-1382 or this section is not eligible for probation,
20 pardon, commutation or suspension of sentence or release on any other basis
21 until the person has served not less than eight months in prison.

22 F. ~~In addition to any other penalty provided by law,~~ A person who is
23 convicted under subsection A, paragraph 3, subdivision (a) of this section
24 shall ~~be sentenced to~~ SERVE at least the minimum ~~sentence TERM OF~~
25 INCARCERATION required pursuant to section 28-1381, ~~except that if a person~~
26 ~~has been convicted of at least two prior violations of section 28-1381,~~
27 ~~section 28-1382 or this section, or any combination of those sections, or~~
28 ~~convicted of at least two prior acts in another jurisdiction that if~~
29 ~~committed in this state would be violations of section 28-1381, section~~
30 ~~28-1382 or this section, or any combination of those sections, within a sixty~~
31 ~~month period, the person shall be sentenced to serve at least the minimum~~
32 ~~sentence required pursuant to this section.~~

33 G. ~~In addition to any other penalty provided by law,~~ A person who is
34 convicted under subsection A, paragraph 3, subdivision (b) of this section
35 shall ~~be sentenced to~~ SERVE at least the minimum ~~sentence TERM OF~~
36 INCARCERATION required pursuant to section 28-1382, ~~except that if a person~~
37 ~~has been convicted of at least two prior violations of section 28-1381,~~
38 ~~section 28-1382 or this section, or any combination of those sections, or~~
39 ~~convicted of at least two prior acts in another jurisdiction that if~~
40 ~~committed in this state would be a violation of section 28-1381, section~~
41 ~~28-1382 or this section, or any combination of those sections, within a sixty~~
42 ~~month period, the person shall be sentenced to serve at least the minimum~~
43 ~~sentence required pursuant to this section.~~

44 H. A person who is convicted of a violation of this section shall
45 attend and complete alcohol or other drug screening, education or treatment

1 from an approved facility. If the person fails to comply with this
2 subsection and is placed on probation, in addition to the provisions of
3 section 13-901 the court may order that the person be incarcerated as a term
4 of probation as follows:

5 1. For a person sentenced pursuant to subsection D of this section,
6 for an individual period of not more than four months and a total period of
7 not more than one year.

8 2. For a person sentenced pursuant to subsection E of this section,
9 for an individual period of not more than eight months and a total period of
10 not more than two years.

11 I. The time that a person spends in custody pursuant to subsection H
12 of this section shall not be counted towards the sentence imposed if the
13 person's probation is revoked and the person is sentenced to prison after
14 revocation of probation.

15 J. **ON A CONVICTION FOR A VIOLATION OF THIS SECTION,** the court:

16 1. Shall report the conviction to the department. On receipt of the
17 report, the department shall revoke the driving privilege of the person. The
18 department shall not issue the person a new driver license within three years
19 of the date of the conviction and, for a conviction of a violation of
20 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this
21 section, shall require the person to equip any motor vehicle the person
22 operates with a certified ignition interlock device pursuant to section
23 28-3319. In addition, the court may order the person to equip any motor
24 vehicle the person operates with a certified ignition interlock device for
25 more than twelve months beginning on the date of reinstatement of the
26 person's driving privilege following a suspension or revocation or on the
27 date of the department's receipt of the report of conviction, whichever
28 occurs later. The person who operates a motor vehicle with a certified
29 ignition interlock device under this paragraph shall comply with article 5 of
30 this chapter.

31 2. In addition to any other penalty prescribed by law, shall order the
32 person to pay an additional assessment of two hundred fifty dollars. If the
33 conviction occurred in the superior court or a justice court, the court shall
34 transmit the monies received pursuant to this paragraph to the county
35 treasurer. If the conviction occurred in a municipal court, the court shall
36 transmit the monies received pursuant to this paragraph to the city
37 treasurer. The city or county treasurer shall transmit the monies received
38 to the state treasurer. The state treasurer shall deposit the monies
39 received in the driving under the influence abatement fund established by
40 section 28-1304. Any fine imposed for a violation of this section and any
41 assessments, restitution and incarceration costs shall be paid before the
42 assessment prescribed in this paragraph.

43 3. Shall order the person to pay a fine of not less than seven hundred
44 fifty dollars.

1 4. In addition to any other penalty prescribed by law, shall order the
2 person to pay an additional assessment of one thousand five hundred dollars
3 to be deposited by the state treasurer in the prison construction and
4 operations fund established by section 41-1651. This assessment is not
5 subject to any surcharge. If the conviction occurred in the superior court
6 or a justice court, the court shall transmit the assessed monies to the
7 county treasurer. If the conviction occurred in a municipal court, the court
8 shall transmit the assessed monies to the city treasurer. The city or county
9 treasurer shall transmit the monies received to the state treasurer.

10 5. In addition to any other penalty prescribed by law, shall order the
11 person to pay an additional assessment of one thousand five hundred dollars
12 to be deposited by the state treasurer in the state general fund. This
13 assessment is not subject to any surcharge. If the conviction occurred in
14 the superior court or a justice court, the court shall transmit the assessed
15 monies to the county treasurer. If the conviction occurred in a municipal
16 court, the court shall transmit the assessed monies to the city treasurer.
17 The city or county treasurer shall transmit the monies received to the state
18 treasurer.

19 K. AFTER COMPLETING THE PERIOD OF SUSPENSION REQUIRED BY SECTION
20 28-1385, A PERSON WHOSE DRIVING PRIVILEGE IS REVOKED FOR A VIOLATION OF
21 SUBSECTION A, PARAGRAPH 3 OF THIS SECTION MAY APPLY TO THE DEPARTMENT FOR A
22 SPECIAL IGNITION INTERLOCK RESTRICTED DRIVER LICENSE PURSUANT TO SECTION
23 28-1401.

24 ~~K~~ L. Aggravated driving or actual physical control while under the
25 influence of intoxicating liquor or drugs committed under:

26 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

27 2. Subsection A, paragraph 3 of this section is a class 6 felony.

28 ~~L~~ M. For the purposes of this section, "suspension, cancellation,
29 revocation or refusal" means any suspension, cancellation, revocation or
30 refusal.

31 Sec. 16. Repeal

32 Section 28-1383, Arizona Revised Statutes, as amended by Laws 2005,
33 chapter 312, section 4, is repealed.

34 Sec. 17. Section 28-1385, Arizona Revised Statutes, is amended to
35 read:

36 28-1385. Administrative license suspension for driving under
37 the influence; report; hearing; summary review

38 A. A law enforcement officer shall forward to the department a
39 certified report as prescribed in subsection B of this section, subject to
40 the penalty for perjury prescribed by section 28-1561, if both of the
41 following occur:

42 1. The officer arrests a person for a violation of section 4-244,
43 paragraph ~~33~~ 36, section 28-1381, section 28-1382 or section 28-1383.

44 2. The person submits to a blood or breath alcohol test permitted by
45 section 28-1321, the results of which indicate either:

1 (a) 0.08 or more alcohol concentration in the person's blood or
2 breath.

3 (b) 0.04 or more alcohol concentration in the person's blood or breath
4 if the person was driving or in actual physical control of a commercial motor
5 vehicle.

6 B. The officer shall make the certified report required by subsection
7 A of this section on forms supplied or approved by the department. The
8 report shall state information that is relevant to the enforcement action,
9 including:

10 1. Information that adequately identifies the arrested person.

11 2. A statement of the officer's grounds for belief that the person was
12 driving or in actual physical control of a motor vehicle in violation of
13 section 4-244, paragraph ~~33~~ 36, section 28-1381 or section 28-1382.

14 3. A statement that the person was arrested for a violation of section
15 4-244, paragraph ~~33~~ 36, section 28-1381, section 28-1382 or section 28-1383.

16 4. A report of the results of the chemical test that was administered.

17 C. The officer shall also serve an order of suspension on the person
18 on behalf of the department. The order of suspension:

19 1. Is effective fifteen days after the date it is served.

20 2. Shall require the immediate surrender of any license or permit to
21 drive that is issued by this state and that is in the possession or control
22 of the person.

23 3. Shall contain information concerning the right to a summary review
24 and hearing, including information concerning the hearing as required by
25 section 28-1321, subsections G and H.

26 4. Shall be accompanied by printed forms ready to mail to the
27 department that the person may fill out and sign to indicate the person's
28 desire for a hearing.

29 5. Shall be entered on the department's records on receipt of the
30 report by the officer and a copy of the order of suspension.

31 D. If the license or permit is not surrendered pursuant to subsection
32 C of this section, the officer shall state the reason for the
33 nonsurrender. If a valid license or permit is surrendered, the officer shall
34 issue a temporary driving permit that is valid for fifteen days. The officer
35 shall forward a copy of the completed order of suspension, a copy of any
36 completed temporary permit and any driver license or permit taken into
37 possession under this section to the department within five days after the
38 issuance of the order of suspension along with the report.

39 E. The department shall suspend the affected person's license or
40 permit to drive or right to apply for a license or permit or any nonresident
41 operating privilege for not less than ninety consecutive days from that date.

42 F. Notwithstanding subsections A through E of this section, the
43 department shall suspend the driving privileges of the person described in
44 subsection A of this section for not less than thirty consecutive days and
45 shall restrict the driving privileges of the person for not less than sixty

1 consecutive additional days to travel between the person's place of
2 employment and residence and during specified periods of time while at
3 employment, to travel between the person's place of residence and the
4 person's secondary or postsecondary school, according to the person's
5 employment or educational schedule, to travel between the person's place of
6 residence and the office of the person's probation officer for scheduled
7 appointments or to travel between the person's place of residence and a
8 treatment facility for scheduled appointments if the person:

9 1. Did not cause serious physical injury as defined in section 13-105
10 to another person during the course of conduct out of which the current
11 action arose.

12 2. Has not been convicted of a violation of section 28-1381, 28-1382
13 or 28-1383 within ~~sixty~~ EIGHTY-FOUR months of the date of commission of the
14 acts out of which the current action arose. The dates of commission of the
15 acts are the determining factor in applying the ~~sixty~~ EIGHTY-FOUR month
16 provision.

17 3. Has not had the person's privilege to drive suspended pursuant to
18 this section or section 28-1321 within ~~sixty~~ EIGHTY-FOUR months of the date
19 of commission of the acts out of which the current action arose.

20 G. If the department receives only the report of the results of the
21 blood or breath alcohol test and the results indicate 0.08 or more alcohol
22 concentration in the person's blood or breath, ~~or~~ show a blood or breath
23 alcohol concentration of 0.04 or more and the person was driving or in actual
24 physical control of a commercial motor vehicle, the department shall notify
25 the person named in the report in writing sent by mail that fifteen days
26 after the date of issuance of the notice the department will suspend the
27 person's license or permit, driving privilege or nonresident driving
28 privilege. The notice shall also state that the department will provide an
29 opportunity for a hearing and administrative review if the person requests a
30 hearing or review in writing and the request is received by the department
31 within fifteen days after the notice is sent.

32 H. A timely request for a hearing stays the suspension until a hearing
33 is held, except that the department shall not return any surrendered license
34 or permit to the person but may issue temporary permits to drive that expire
35 no later than when the department has made its final decision. If the person
36 is a resident without a license or permit or has an expired license or
37 permit, the department may allow the person to apply for a license or
38 permit. If the department determines the person is otherwise entitled to the
39 license or permit, the department shall issue, but retain, the license or
40 permit, subject to this section. All hearings requested under this section
41 shall be conducted in the same manner and under the same conditions as
42 provided in section 28-3306.

43 I. For the purposes of this section, the scope of the hearing shall
44 include only the following issues:

1 1. Whether the officer had reasonable grounds to believe the person
2 was driving or was in actual physical control of a motor vehicle while under
3 the influence of intoxicating liquor.

4 2. Whether the person was placed under arrest for a violation of
5 section 4-244, paragraph ~~33~~ 36, section 28-1381, section 28-1382 or section
6 28-1383.

7 3. Whether a test was taken, the results of which indicated the
8 alcohol concentration in the person's blood or breath at the time the test
9 was administered of either:

10 (a) 0.08 or more.

11 (b) 0.04 or more if the person was driving or in actual physical
12 control of a commercial motor vehicle.

13 4. Whether the testing method used was valid and reliable.

14 5. Whether the test results were accurately evaluated.

15 J. The results of the blood or breath alcohol test shall be admitted
16 on establishing the requirements in section 28-1323 or 28-1326.

17 K. If the department determines at the hearing to suspend the affected
18 person's privilege to operate a motor vehicle, the suspension provided in
19 this section is effective fifteen days after giving written notice of the
20 suspension, except that the department may issue or extend a temporary
21 license that expires on the effective date of the suspension. If the person
22 is a resident without a license or permit or has an expired license or permit
23 to operate a motor vehicle in this state, the department shall deny the
24 issuance of a license or permit to the person for not less than ninety
25 consecutive days.

26 L. A person may apply for a summary review of an order issued pursuant
27 to this section instead of a hearing at any time before the effective date of
28 the order. The person shall submit the application in writing to any
29 department driver license examining office together with any written
30 explanation as to why the department should not suspend the driving
31 privilege. The agent of the department receiving the notice shall issue to
32 the person an additional driving permit that expires twenty days from the
33 date the request is received. The department shall review all reports
34 submitted by the officer and any written explanation submitted by the person
35 and shall determine if the order of suspension should be sustained or
36 cancelled. The department shall not hold a hearing, and the review is not
37 subject to title 41, chapter 6. The department shall notify the person of
38 its decision before the temporary driving permit expires.

39 M. If the suspension or determination that there should be a denial of
40 issuance is not sustained after a hearing or review, the ruling is not
41 admissible in and does not have any effect on any civil or criminal court
42 proceeding.

43 N. If it has been determined under the procedures of this section that
44 a nonresident's privilege to operate a motor vehicle in this state has been
45 suspended, the department shall give information in writing of the action

1 taken to the motor vehicle administrator of the state of the person's
2 residence and of any state in which the person has a license.

3 Sec. 18. Section 28-1387, Arizona Revised Statutes, is amended to
4 read:

5 28-1387. Prior convictions; alcohol or other drug screening.
6 education and treatment; license suspension;
7 supervised probation; civil liability; procedures

8 A. The court shall allow the allegation of a prior conviction or any
9 other pending charge of a violation of section 28-1381, 28-1382 or 28-1383 or
10 an act in another jurisdiction that if committed in this state would be a
11 violation of section 28-1381, 28-1382 or 28-1383 filed twenty or more days
12 before the date the case is actually tried and may allow the allegation of a
13 prior conviction or any other pending charge of a violation of section
14 28-1381, 28-1382 or 28-1383 or an act in another jurisdiction that if
15 committed in this state would be a violation of section 28-1381, 28-1382 or
16 28-1383 filed at any time before the date the case is actually tried if this
17 state makes available to the defendant when the allegation is filed a copy of
18 any information obtained concerning the prior conviction or other pending
19 charge. Any conviction may be used to enhance another conviction
20 irrespective of the dates on which the offenses occurred within the ~~sixty~~
21 ~~EIGHTY-FOUR~~ month provision. For the purposes of this article, an order of a
22 juvenile court adjudicating a person delinquent is equivalent to a
23 conviction.

24 B. In addition to any other penalties prescribed by law, the judge
25 shall order a person who is convicted of a violation of section 28-1381 or
26 28-1382 to complete alcohol or other drug screening that is provided by a
27 facility approved by the department of health services or a probation
28 department. If a judge determines that the person requires further alcohol
29 or other drug education or treatment, the person may be required pursuant to
30 court order to obtain alcohol or other drug education or treatment under the
31 court's supervision from an approved facility. The judge may review an
32 education or treatment determination at the request of the state, the
33 defendant or the probation officer or on the judge's initiative. The person
34 shall pay the costs of the screening, education or treatment unless, after
35 considering the person's ability to pay all or part of the costs, the court
36 waives all or part of the costs. If a person is referred to a screening,
37 education or treatment facility, the facility shall report to the court
38 whether the person has successfully completed the screening, education or
39 treatment program.

40 C. After a person who is sentenced pursuant to section 28-1381,
41 subsection I has served twenty-four consecutive hours in jail or after a
42 person who is sentenced pursuant to section 28-1381, subsection K or section
43 28-1382, subsection D or F has served forty-eight consecutive hours in jail
44 and after the court receives confirmation that the person is employed or is a
45 student, the court may provide in the sentence that the defendant, if the

1 defendant is employed or is a student and can continue the defendant's
2 employment or schooling, may continue the employment or schooling for not
3 more than twelve hours a day nor more than five days a week. The person
4 shall spend the remaining day, days or parts of days in jail until the
5 sentence is served and shall be allowed out of jail only long enough to
6 complete the actual hours of employment or schooling.

7 D. Unless the license of a person convicted under section 28-1381 or
8 28-1382 has been or is suspended pursuant to section 28-1321 or 28-1385, the
9 department on receipt of the abstract of conviction of a violation of section
10 28-1381 or 28-1382 shall suspend the license of the affected person for not
11 less than ninety consecutive days.

12 E. When the department receives notification that the person meets the
13 criteria provided in section 28-1385, subsection F, the department shall
14 suspend the driving privileges of the person for not less than thirty
15 consecutive days and shall restrict the driving privileges of the person for
16 not less than sixty consecutive additional days to travel between any of the
17 following:

18 1. The person's place of employment and residence and during specified
19 periods of time while at employment.

20 2. The person's place of residence and the person's secondary or
21 postsecondary school, according to the person's employment or educational
22 schedule.

23 3. The person's place of residence and a treatment facility for
24 scheduled appointments.

25 4. The person's place of residence and the office of the person's
26 probation officer for scheduled appointments.

27 F. If a person is placed on probation for violating section 28-1381 or
28 28-1382, the probation shall be supervised unless the court finds that
29 supervised probation is not necessary or the court does not have supervisory
30 probation services.

31 G. Any political subdivision processing or using the services of a
32 person ordered to perform community restitution pursuant to section 28-1381
33 or 28-1382 does not incur any civil liability to the person ordered to
34 perform community restitution as a result of these activities unless the
35 political subdivision or its agent or employee acts with gross negligence.

36 H. Except for another violation of this article, the state shall not
37 dismiss a charge of violating any provision of this article unless there is
38 an insufficient legal or factual basis to pursue that charge.

39 Sec. 19. Section 28-3304, Arizona Revised Statutes, is amended to
40 read:

41 28-3304. Mandatory revocation of license; definition

42 A. In addition to the grounds for mandatory revocation provided for in
43 chapters 3, 4 and 5 of this title, the department shall immediately revoke
44 the license of a driver on receipt of a record of the driver's conviction of
45 any of the following offenses if the conviction is final:

1 1. A homicide or aggravated assault resulting from the operation of a
2 motor vehicle.

3 2. Driving a motor vehicle while under the influence of a drug as
4 defined in section 13-3401 or in violation of section 28-1381, subsection A,
5 paragraph 3.

6 3. A felony in the commission of which a motor vehicle is used.

7 4. Theft of a motor vehicle pursuant to section 13-1802.

8 5. Unlawful use of means of transportation pursuant to section
9 13-1803.

10 6. Theft of means of transportation pursuant to section 13-1814.

11 7. Drive by shooting pursuant to section 13-1209.

12 8. Failure to stop and render aid as required under the laws of this
13 state if a motor vehicle accident results in the death or personal injury of
14 another.

15 9. Perjury or the making of a false affidavit or statement under oath
16 to the department under this chapter or under any other law relating to the
17 ownership or operation of a motor vehicle.

18 10. Conviction or forfeiture of bail not vacated on a second or
19 subsequent charge of the following offenses that are committed within ~~sixty~~
20 EIGHTY-FOUR months:

21 (a) Reckless driving.

22 (b) Racing on highways.

23 (c) Any combination of a violation of section 28-1381 or 28-1382 and
24 reckless driving, of a violation of section 28-1381 or 28-1382 and racing on
25 highways, or of reckless driving and racing on highways, if they do not arise
26 out of the same event.

27 11. Conviction or forfeiture of bail not vacated on a second charge of
28 violating section 28-1381 or 28-1382 within ~~sixty~~ EIGHTY-FOUR months.

29 12. Conviction or forfeiture of bail not vacated on a third or
30 subsequent charge of violating section 28-1381 or 28-1382 within ~~sixty~~
31 EIGHTY-FOUR months.

32 13. Conviction or forfeiture of bail not vacated on a charge of
33 violating section 28-1381 or 28-1382 and the driver has been convicted within
34 a period of ~~sixty~~ EIGHTY-FOUR months of an offense in another jurisdiction
35 that if committed in this state would be a violation of section 28-1381 or
36 28-1382.

37 B. In determining the starting date for the ~~sixty~~ EIGHTY-FOUR month
38 period prescribed in subsection A, paragraphs 10 through 13 of this section,
39 the department shall use the date of the commission of the offense.

40 C. For the purposes of this section, "conviction" means a final
41 adjudication or judgment, including an order of a juvenile court finding that
42 a juvenile violated any provision of this title or committed a delinquent act
43 that if committed by an adult would constitute a criminal offense.

1 Sec. 20. Section 28-3319, Arizona Revised Statutes, as amended by Laws
2 2005, chapter 312, section 12, is amended to read:

3 28-3319. Action after license suspension, revocation or denial
4 for driving under the influence or refusal of test;
5 ignition interlock device requirement; definition

6 A. If pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
7 or 28-3322 the license of a driver or the driving privilege of a nonresident
8 is suspended or revoked, the department shall not terminate the suspension or
9 revocation or issue a special ignition interlock restricted driver license,
10 if applicable, pursuant to chapter 4, article 3.1 of this title until the
11 person provides proof of financial responsibility pursuant to chapter 9,
12 article 3 of this title.

13 B. If pursuant to section 28-1321, 28-1381, 28-1382, 28-1383, 28-3320
14 or 28-3322, an unlicensed resident is denied a license or permit to operate a
15 motor vehicle, the department shall not issue a license or permit until the
16 person provides proof of financial responsibility pursuant to chapter 9,
17 article 3 of this title.

18 C. If a person whose license or driving privilege is suspended or
19 revoked pursuant to section 28-1321, 28-1381, 28-1382 or 28-1383 is ordered,
20 pursuant to section 28-1381, 28-1382 or 28-1383, to attend alcohol or other
21 drug screening, education or treatment, the department shall not either:

22 1. Terminate the suspension or issue a special ignition interlock
23 restricted driver license, if applicable, pursuant to chapter 4, article 3.1
24 of this title until the person provides proof from the treatment facility
25 that the person has completed or is participating satisfactorily in alcohol
26 or other drug screening, education or treatment.

27 2. Issue a new license or a special ignition interlock restricted
28 driver license, if applicable, pursuant to chapter 4, article 3.1 of this
29 title to operate a motor vehicle after the revocation until the person
30 provides proof from the facility that the person has completed the court
31 ordered program.

32 D. On receipt of a report of conviction from a court, the department
33 shall require any motor vehicle the convicted person operates to be equipped
34 with a functioning certified ignition interlock device and the convicted
35 person to meet the requirements prescribed in section 28-1461 for twelve
36 months if any of the following applies:

37 1. The department determines that within a period of ~~sixty~~ EIGHTY-FOUR
38 months a person is convicted of a second or subsequent violation of section
39 28-1381 with a prior conviction of a violation of section 28-1381 or 28-1382
40 or an act in another jurisdiction that if committed in this state would be a
41 violation of section 28-1381 or 28-1382.

42 2. The conviction is for a violation of section 28-1382.

43 3. The conviction is for a violation of section 28-1383, subsection A,
44 paragraph 1 or 2 or paragraph 3, subdivision (b).

1 E. The twelve month period prescribed in subsection D of this section
2 begins on the date of reinstatement of the person's driving privilege
3 following a suspension or revocation or on the date of the department's
4 receipt of the report of conviction, whichever occurs later.

5 F. A person who is required to equip a motor vehicle with a certified
6 ignition interlock device pursuant to subsection D of this section shall
7 comply with chapter 4, article 5 of this title.

8 G. For the purposes of this section, "certified ignition interlock
9 device" has the same meaning prescribed in section 28-1301.

10 Sec. 21. Section 28-3320, Arizona Revised Statutes, is amended to
11 read:

12 28-3320. Suspension of license for persons under eighteen years
13 of age; notice; definition

14 A. In addition to the grounds for mandatory suspension or revocation
15 provided for in chapters 3, 4 and 5 of this title, the department shall
16 immediately suspend the driver license or privilege to drive or refuse to
17 issue a driver license or privilege to drive of a person who commits an
18 offense while under eighteen years of age as follows:

19 1. For a period of two years on receiving the record of the person's
20 conviction for a violation of section 4-244, paragraph ~~33~~ 36, section 28-1381
21 or section 28-1382.

22 2. For a period of three years on receiving the record of the person's
23 conviction for a violation of section 28-1383.

24 3. Until the person's eighteenth birthday on receiving the record of
25 the person's conviction for a violation of section 13-1602, subsection A,
26 paragraph 1 or section 13-1604, subsection A involving the damage or
27 disfigurement of property by graffiti.

28 4. Until the person's eighteenth birthday on receiving the record of
29 the person's conviction of criminal damage pursuant to section 13-1602,
30 subsection A, paragraph 5 or a violation of a city or town ordinance that
31 prohibits the type of criminal action prescribed in section 13-1602,
32 subsection A, paragraph 5.

33 5. Until the person's eighteenth birthday on receiving the record of
34 the person's conviction for a violation of any statute or ordinance involving
35 the purchase or possession of materials used for graffiti.

36 6. Until the person's eighteenth birthday on receiving the record of
37 the person's conviction for a violation of any provision of title 13,
38 chapter 34.

39 7. Until the person's eighteenth birthday or for a period of two years
40 on receiving the record of the person's conviction for a second or subsequent
41 violation of section 4-244, paragraph 9, if ordered by the court.

42 8. Until the person's eighteenth birthday on receiving the record of
43 the person's conviction of theft of a motor vehicle pursuant to section
44 13-1802, unlawful use of means of transportation pursuant to section 13-1803
45 or theft of means of transportation pursuant to section 13-1814.

1 B. If ordered by the court, the department shall restrict the person's
2 privilege to drive between the person's home, school and place of employment
3 during specified periods of time according to the person's school and
4 employment schedule.

5 C. If a person commits an offense prescribed in subsection A,
6 paragraph 1 of this section and the person's privilege to drive is restricted
7 as prescribed in subsection B of this section, the department shall issue a
8 special ignition interlock restricted driver license to the person pursuant
9 to section 28-1401.

10 D. For the purposes of this section, "conviction" means a final
11 conviction or judgment, including an order of the juvenile court finding that
12 a juvenile violated any provision of this title or committed a delinquent act
13 that if committed by an adult would constitute a criminal offense.

14 Sec. 22. Section 28-3322, Arizona Revised Statutes, is amended to
15 read:

16 28-3322. Suspension of license for persons eighteen, nineteen
17 and twenty years of age; definition

18 A. In addition to the grounds for mandatory suspension or revocation
19 provided for in chapters 3, 4 and 5 of this title, the department shall
20 immediately suspend the driver license or privilege to drive or refuse to
21 issue a driver license or privilege to drive of a person who commits a
22 violation of section 4-244, paragraph ~~33~~ 36 while the person is eighteen,
23 nineteen or twenty years of age on receipt of the record of the person's
24 conviction for a violation of section 4-244, paragraph ~~33~~ 36 for a period of
25 two years.

26 B. If ordered by the court, the department shall restrict the person's
27 privilege to drive between the person's home, school and place of employment
28 during specified periods of time according to the person's school and
29 employment schedule.

30 C. If a person's privilege to drive is restricted as prescribed in
31 subsection B of this section, the department shall issue a special ignition
32 interlock restricted driver license to the person pursuant to section
33 28-1401.

34 D. For the purposes of this section, "conviction" means a final
35 conviction or judgment, including an order of the juvenile court finding that
36 a juvenile violated any provision of this title or committed a delinquent act
37 that if committed by an adult would constitute a criminal offense.

38 Sec. 23. Section 28-3511, Arizona Revised Statutes, is amended to
39 read:

40 28-3511. Removal and immobilization or impoundment of vehicle

41 A. A peace officer shall cause the removal and either immobilization
42 or impoundment of a vehicle if the peace officer determines that a person is
43 driving the vehicle while any of the following applies:

44 1. The person's driving privilege is revoked for any reason.

1 2. The person's driving privilege is suspended because of a driving
2 under the influence conviction.

3 3. The person's driving privilege is suspended pursuant to the
4 department's action based on a previous conviction for a violation of section
5 28-3473.

6 4. The person's driving privilege is suspended pursuant to section
7 28-3306, subsection A, paragraph 3.

8 5. According to department records the person has not ever been issued
9 a driver license or permit and the person does not produce evidence of a
10 driver license issued by another jurisdiction.

11 B. A peace officer shall cause the removal and impoundment of a
12 vehicle if the peace officer determines that a person is driving the vehicle
13 and if all of the following apply:

14 1. The person's driving privilege is canceled, suspended or revoked or
15 according to department records the person has not ever been issued a driver
16 license or permit and the person does not produce evidence of a driver
17 license issued by another jurisdiction.

18 2. The person is not in compliance with the financial responsibility
19 requirements of chapter 9, article 4 of this title.

20 3. The person is driving a vehicle that is involved in an accident
21 that results in either property damage or injury to or death of another
22 person.

23 C. Except as provided in subsection D of this section, while a peace
24 officer has control of the vehicle the peace officer shall cause the removal
25 and either immobilization or impoundment of the vehicle if the peace officer
26 has probable cause to arrest the driver of the vehicle for a violation of
27 section 4-244, paragraph ~~33~~ 36 or section 28-1382 or 28-1383.

28 D. A peace officer shall not cause the removal and either the
29 immobilization or impoundment of a vehicle pursuant to subsection C of this
30 section if either:

31 1. All of the following apply:

32 (a) The peace officer determines that the vehicle is currently
33 registered and that the driver or the vehicle is in compliance with the
34 financial responsibility requirements of chapter 9, article 4 of this title.

35 (b) The spouse of the driver is with the driver at the time of the
36 arrest.

37 (c) The peace officer has reasonable grounds to believe that the
38 spouse of the driver:

39 (i) Has a valid driver license.

40 (ii) Is not impaired by intoxicating liquor, any drug, a vapor
41 releasing substance containing a toxic substance or any combination of
42 liquor, drugs or vapor releasing substances.

43 (iii) Does not have any spirituous liquor in the spouse's body if the
44 spouse is under twenty-one years of age.

1 (d) The spouse notifies the peace officer that the spouse will drive
2 the vehicle from the place of arrest to the driver's home or other place of
3 safety.

4 (e) The spouse drives the vehicle as prescribed by subdivision (d) of
5 this paragraph.

6 2. The vehicle is owned by the driver's parent or guardian and the
7 peace officer has probable cause to arrest the driver of the vehicle for a
8 violation of section 4-244, paragraph ~~33~~ 36 but not for a violation of
9 section 28-1382 or 28-1383.

10 E. Except as otherwise provided in this article, a vehicle that is
11 removed and either immobilized or impounded pursuant to subsection A, ~~or~~ B or
12 C of this section shall be immobilized or impounded for thirty days. An
13 insurance company does not have a duty to pay any benefits for charges or
14 fees for immobilization or impoundment.

15 F. The owner of a vehicle that is removed and either immobilized or
16 impounded pursuant to subsection A, ~~or~~ B or C of this section, the spouse of
17 the owner and each person identified on the department's record with an
18 interest in the vehicle shall be provided with an opportunity for an
19 immobilization or poststorage hearing pursuant to section 28-3514.

20 Sec. 24. Section 28-3512, Arizona Revised Statutes, is amended to
21 read:

22 28-3512. Release of vehicle; definition

23 A. An immobilizing or impounding agency shall release a vehicle to the
24 owner before the end of the thirty day immobilization or impoundment period
25 under any of the following circumstances:

26 1. If the vehicle is a stolen vehicle.

27 2. If the vehicle is subject to bailment and is driven by an employee
28 of a business establishment, including a parking service or repair garage,
29 who is subject to section 28-3511, subsection A, ~~or~~ B or C.

30 3. If the owner presents proof satisfactory to the immobilizing or
31 impounding agency that the owner's driving privilege has been reinstated.

32 4. All of the following apply:

33 (a) The owner or the owner's agent was not the person driving the
34 vehicle pursuant to section 28-3511, subsection A.

35 (b) The owner or the owner's agent is in the business of renting motor
36 vehicles without drivers.

37 (c) The vehicle is registered pursuant to section 28-2166.

38 5. For the spouse of the owner or any person who is identified as an
39 owner of the vehicle on the records of the department, if the spouse or
40 person was not the driver of the vehicle at the time of removal and either
41 immobilization or impoundment and the spouse or person enters into an
42 agreement with the immobilizing or impounding agency that stipulates that if
43 the spouse or person allows an unlicensed driver or a driver arrested in
44 violation of section 4-244, paragraph ~~33~~ 36 or section 28-1382 or 28-1383 to
45 drive the spouse's or person's vehicle within one year after the agreement is

1 signed, the spouse or person will not be eligible to obtain release of the
2 spouse's or person's vehicle before the end of the thirty day immobilization
3 or impoundment period.

4 B. A vehicle shall not be released pursuant to subsection A of this
5 section except on order of a justice court, immobilizing agency or impounding
6 agency pursuant to an immobilization or a poststorage hearing under section
7 28-3514 or on presentation of the owner's or owner's spouse's currently valid
8 driver license to operate the vehicle and proof of current vehicle
9 registration and, if the driving privilege of the person driving the vehicle
10 was suspended due to a previous conviction for driving under the influence
11 pursuant to section 28-1381, subsection K, paragraph 4, section 28-1382 or
12 section 28-1383 and a certified ignition interlock device was required to be
13 installed on the vehicle, on presentation of proof of installation of a
14 functioning certified ignition interlock device in the vehicle. The
15 impounding agency, storage yard, facility, person or agency having physical
16 possession of the vehicle shall allow access to the impounded vehicle for the
17 purpose of installing a certified ignition interlock device. The impounding
18 agency, storage yard, facility, person or agency having physical possession
19 of the vehicle shall not charge a fee for providing access to the vehicle or
20 for the installation of the certified ignition interlock device.

21 C. The owner is responsible for paying all immobilization, towing and
22 storage charges related to the immobilization or impoundment of the vehicle
23 and any administrative charges established pursuant to section 28-3513,
24 unless the vehicle is stolen and the theft was reported to the appropriate
25 law enforcement agency. If the vehicle is stolen and the theft was reported
26 to the appropriate law enforcement agency, the operator of the vehicle at the
27 time of immobilization or impoundment is responsible for all immobilization,
28 towing, storage and administrative charges.

29 D. The immobilizing or impounding agency shall release a vehicle to a
30 person, other than the owner, identified on the department's record as having
31 an interest in the vehicle before the end of the thirty day immobilization or
32 impoundment period if all of the following conditions are met:

33 1. The person is a motor vehicle dealer, bank, credit union or
34 acceptance corporation or any other licensed financial institution legally
35 operating in this state or is another person who is not the owner and who
36 holds a security interest in the vehicle.

37 2. The person pays all immobilization, towing and storage fees related
38 to the immobilization or impoundment of the vehicle unless the vehicle is
39 stolen and the theft was reported to the appropriate law enforcement agency.
40 If the vehicle is stolen and the theft was reported to the appropriate law
41 enforcement agency, the operator of the vehicle at the time of immobilization
42 or impoundment is responsible for all immobilization, towing, storage and
43 administrative charges.

44 3. The person presents foreclosure documents or an affidavit of
45 repossession of the vehicle.

1 E. Before a person described in subsection D of this section releases
2 the vehicle, the person may require the owner to pay charges that the person
3 incurred in connection with obtaining custody of the vehicle, including all
4 immobilization, towing and storage charges that are related to the
5 immobilization or impoundment of the vehicle and any administrative charges
6 that are established pursuant to section 28-3513.

7 F. A vehicle shall not be released after the end of the thirty day
8 immobilization or impoundment period except on presentation of the owner's or
9 owner's agent's currently valid driver license to operate the vehicle and
10 proof of current vehicle registration and, if the driving privilege of the
11 person driving the vehicle was suspended due to a previous conviction for
12 driving under the influence pursuant to section 28-1381, subsection K,
13 paragraph 4, section 28-1382 or section 28-1383 and a certified ignition
14 interlock device was required to be installed on the vehicle, on presentation
15 of proof of installation of a functioning certified ignition interlock device
16 in the vehicle. The impounding agency, storage yard, facility, person or
17 agency having physical possession of the vehicle shall allow access to the
18 impounded vehicle for the purpose of installing a certified ignition
19 interlock device. The impounding agency, storage yard, facility, person or
20 agency having physical possession of the vehicle shall not charge a fee for
21 providing access to the vehicle or for the installation of the certified
22 ignition interlock device.

23 G. The storage charges relating to the impoundment of a vehicle
24 pursuant to this section shall either:

25 1. Be subject to a contractual agreement between the impounding agency
26 and a towing firm for storage services pursuant to section 28-1108.

27 2. Not exceed fifteen dollars for each day of storage.

28 H. The immobilizing or impounding agency shall have no lien or
29 possessory interest in a stolen vehicle if the theft was reported to the
30 appropriate law enforcement agency. The immobilizing or impounding agency
31 shall release the vehicle to the owner or person other than the owner as
32 identified in subsection D of this section even if the operator at the time
33 of immobilization or impoundment has not paid all immobilization, towing,
34 storage and administrative fees.

35 I. For the purposes of this section, "certified ignition interlock
36 device" has the same meaning prescribed in section 28-1301.

37 Sec. 25. Laws 2005, chapter 284, section 15, is amended to read:

38 Sec. 15. Temporary transfers of licenses

39 Between July 1, 2006 and December 31, ~~2007~~ 2008, bar, beer and wine bar
40 and liquor store licenses may be transferred from counties with a population
41 of five hundred thousand or more persons to counties with a population of
42 less than five hundred thousand persons.

1 Sec. 26. Applicability of audit provisions

2 Section 4-213, Arizona Revised Statutes, as amended by this act, does
3 not apply to any audit or disciplinary action completed or any consent
4 agreement signed before January 1, 2006.

5 Sec. 27. Reporting requirement

6 The department of liquor licenses and control shall submit a report to
7 the governor, the president of the senate and the speaker of the house of
8 representatives on or before November 1, 2007 and shall provide a copy of
9 this report to the director of the Arizona state library, archives and public
10 records regarding the impact of sections 4-207, 4-209 and 4-213, Arizona
11 Revised Statutes, as amended by this act. The department of liquor licenses
12 and control shall solicit input from neighborhood groups and local
13 jurisdictions before issuing the report.

14 Sec. 28. Conditional enactment; notice

15 A. Sections 4-207, 4-209, 4-213 and 28-1304, Arizona Revised Statutes,
16 as amended by this act, and section 26 of this act, relating to applicability
17 of audit provisions, do not become effective unless the forty-seventh
18 legislature, second regular session, specifically authorizes the department
19 of liquor licenses and control to hire two additional auditors in the general
20 appropriations act.

21 B. The director of the department of liquor licenses and control shall
22 notify in writing the director of the Arizona legislative council of the date
23 on which this condition occurs or if this condition does not occur.